UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA

IN RE:	.	Case No. 08-35653(KRH)
	.	
CIRCUIT CITY STORES, INC.	.	701 East Broad Street
	.	Richmond, VA 23219
	.	
Debtor.	.	September 22, 2009
. . . . .		11:01 a.m.

TRANSCRIPT OF HEARING
BEFORE HONORABLE KEVIN R. HUENNEKENS
UNITED STATES BANKRUPTCY COURT JUDGE

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MR. FOLEY: Good morning, Your Honor, Doug Foley with McGuire, Woods on behalf of the debtors.

THE COURT: Good morning, Mr. Foley.

MR. FOLEY: With me at counsel table is Chris Dickerson from the law firm of Skadden, Arps, Jeff Pomerantz who's counsel for the Committee, Ian Fredericks from Skadden, Arps and Sarah Boehm from my firm, as well. Your Honor, with -- here from the Company today, Your Honor, is Michelle Mosier whose the principal financial officer, Jim Markum the CEO and Deborah Miller the General Counsel. Your Honor, we also have filed an amended agenda today to reflect some of the updates since yesterday. We've been working to try to resolve some of the disclosure statement objections. If we could go through the other items first on the agenda, Your Honor?

THE COURT: You may.

MR. FOLEY: Then we can proceed with the disclosure statement issues. Your Honor, item number one on the agenda is a matter that was on at the last hearing. Your Honor, this has been withdrawn without prejudice. It's essentially moot as a result of Your Honor's ruling at the last hearing with respect to the sale of the remaining electoral property.

THE COURT: All right. Very good.

MR. FOLEY: Your Honor, item number two, again, this is our long-standing motion with respect to establishing sell down procedures and trading and equity and security claims.

We've been in consultation with the Committee with respect to the need to turn this interim order into a final order, but for purposes of today we've asked that and agreed that the matter should be adjourned until the confirmation hearing of -- hopefully will be the confirmation hearing of November 23rd.

THE COURT: November 23?

MR. FOLEY: Your Honor, item number three, this is the lease disposition procedures motion. There is one item left that's unresolved and that's the objection of 444 Connecticut Avenue. The issue there relates to attorneys fees which may be precedential with respect to some claims in the case. Other claims in the case, we've asked that they've -- they've agreed to adjourn the matter until the October 7th omnibus hearing date at 2 p.m.

THE COURT: October 7th?

MR. FOLEY: Yes, Your Honor.

THE COURT: All right.

MR. FOLEY: Item number four, Your Honor, this is Sony Picture Home Entertainment motion for allowance and payment of 5039 claim. They have agreed to adjourn their motion until the October 15th omnibus hearing date at 2 p.m.

THE COURT: All right. Very good.

MR. FOLEY: Your Honor, items number five, six, eight and nine are all motions by parties seeking permission to file a right proof of claim of some priority or type. They have

respectively agreed to adjourn their motions until the confirmation hearing and item number five is the motion by Mr. Chalifoux. Number six is Vertis. Number eight is Waste Management. Number nine is Minor Fleet Management Corporation. All those, Your Honor, the movants have agreed to adjourn until November 23rd at 10 a.m.

THE COURT: Okay.

MR. FOLEY: Your Honor --

THE COURT: That'll be adjourned.

MR. FOLEY: -- item number seven is application by Infogame Corporation for allowance and payment of administrative expense priority claim. We have been in negotiations with them and we believe we are very close to a resolution of that motion in its entirety. They have agreed as a result of those negotiations to adjourn their matter until October 7th at 2 p.m.

THE COURT: All right.

MR. FOLEY: Your Honor, to go back to the motions for late claim, there was a motion that we received that Your Honor may recall from the last hearing by Ms. Ashley Isaac that was mailed to us and we received it yesterday. She noticed it for today but we just got it yesterday. I don't even think it's hit the docket yet, but we would ask that that matter, similar to the others be set for hearing on the November 23rd hearing date at 10.

THE COURT: I think that's appropriate.

MR. FOLEY: Your Honor, items number 10 is our motion with respect to temporarily allowing certain personal injury tort and wrongful death claims at a zero amount for voting purposes. I wanted to give the Court a little background with respect to why this motion came about and it is in conjunction with the omnibus objection number 31, which is item number 17.

Your Honor, item number 17 is our omnibus objection to certain legal, litigation-type claims. Some of those claims, Your Honor, appear to be asserting claims that are -- may be in the nature of personal injury tort and wrongful death and as Your Honor is aware, 28 U.S.C. 157(b)(2)(B) and (5) talk about the limits of the Court -- certain limitations on the Court -- the Bankruptcy Court's jurisdiction with respect to disposition of personal injury tort and wrongful death claims.

Nobody has raised that issue with respect to our ability to object to those claims in this Court and we believe that the precedent in this District is that to the extent parties don't respond to the claim objection that Your Honor could enter a default order with respect to that disposing of the claim because that doesn't constitute a trial for purposes of having to try the case. It's a pre-trial matter and we believe the case law would allow the Court to enter such an order.

However, in order to avoid any complications at this

hearing and in order to accomplish the purpose for which we were, at least, initially objecting to those claims now for voting purposes, what we did with respect to item number 17 is we had withdrawn our objection as to any claim in omnibus objection number 31 that on its face appeared to be asserting a claim that was in the nature of personal injury tort, wrongful death and what we have done is included it in this motion in item number 10 to temporarily allow them at zero for voting purposes so that when the solicitation packages go out, they would get a ballot that would count for numerosity but not for two-thirds an amount.

So, Your Honor, those -- we did -- when we served -- and we've -- we served the withdrawal and this motion on those parties on the exact same day in the same package so they should understand what we're -- what we've done. We have received no responses with respect to item number ten and unless anybody has any questions, we would ask the Court to order the relief that we're requesting in item number 10.

THE COURT: All right, Mr. Foley. Does any party wish to be heard in connection with the debtor's motion to temporarily allow the certain personal injury and wrongful death claims?

ALL COUNSEL: (No verbal response)

THE COURT: All right. There being no response and there being no objection, the Court will grant the motion.

MR. FOLEY: Thank you, Your Honor. And while I'm here before I turn the podium over to Ms. Boehm to deal with some of the other omnibus objections, we could -- if we could take up item number 17, Your Honor, which is omnibus objection 31. Your Honor, the relief that we're seeking today with respect to omnibus objection number 31 is the Court to enter an order for any body who did not respond to the -- to the claim objection and to adjourn until the November 3rd hearing date. The -- those parties that did file a response so that we continue to try to see if we can't get consensual resolutions with respect to those responses.

Again, Your Honor, none of the claims that we're seeking the Court to order today, at least on their face, appear to be asserting a personal injury tort, wrongful death claim. So, we would ask the Court to grant the relief that we're seeking in item number 17 on the docket.

THE COURT: All right. Does any party wish to be heard in connection with the debtor's 31st omnibus objection to claims? Yes, sir?

MR. SEAMSTER: Hi. Rick Seamster with Wallace Pledger. We're --

THE COURT: Please come to the podium.

MR. SEAMSTER: Well, Your Honor, local counsel for Unocal Enterprises.

THE COURT: All right. Come -- if you would identify

yourself on the record, once again, sir for --

MR. SEAMSTER: Sure. Rick Seamster with the law firm of Wallace Pledger.

THE COURT: All right.

MR. SEAMSTER: We're local counsel for Unocal Enterprises. National counsel, which is Mr. Thomas Weiss, filed a response a day late on the 31st omnibus objection and there's an affidavit in the response where Mr. Weiss says it was basically a calendaring error and he asked to be heard before the Court on -- on the objection -- on the response to the objection. So --

THE COURT: All right.

MR. SEAMSTER: -- that's where -- where we stand. We'd like to be able to proceed with that even though it was not timely filed.

MR. FOLEY: We have no problem with that, Your Honor. We'll include this claim in the exhibit that would adjourn the response, even though it was late, until the November 3rd hearing date.

THE COURT: All right. So, you -- you'll allow the late response?

MR. FOLEY: We'll treat -- we'll treat it as timely filed.

THE COURT: Okay. So, the response will be treated as timely and then the motion would be the -- that the

objection would be heard on November 23.

MR. SEAMSTER: November 23?

THE COURT: Do you have any objection to that?

MR. FOLEY: November 3rd, Your Honor.

THE COURT: November --

MR. FOLEY: November 3rd.

THE COURT: November 3rd.

MR. FOLEY: Third. We have a -- I think we have an omnibus hearing on November 3rd at, I believe, 10 o'clock or 11 o'clock.

THE COURT: November 3.

MR. FOLEY: Is that right? And I believe that on the agenda which was -- well --

THE COURT: It's at 11 o'clock --

MR. FOLEY: It's 11.

THE COURT: -- on the 3rd.

MR. FOLEY: And I believe this claim is actually already listed in the agenda that we've filed this morning as being adjourned --

MR. SEAMSTER: It is.

MR. FOLEY: -- and not ordered.

MR. SEAMSTER: Okay.

MR. FOLEY: So, we did pick that one up.

THE COURT: All right. Very good.

MR. SEAMSTER: Thank you, Your Honor.

THE COURT: All right. Thank you. Does any other party wish to be heard in connection with the debtors' omnibus objection 31?

ALL COUNSEL: (No verbal response)

THE COURT: All right. There being no other objections, the motion will be granted.

MR. FOLEY: Your Honor, item number 13 is a status hearing. This is on for the second time, carried over from August 18th, I believe. This is our omnibus objection 24. This was objecting to certain claims that we're asserting real estate tax liability for property that was leased locations. Your Honor, we would -- we'll -- I believe we may have resolved all the responses to this objection. One of the issues that has arisen is that some of the parties have clarified in their response that they weren't actually asserting a claim for real estate taxes but instead for personal property -- I -- property taxes and to the extent that that's the type of claim that they were asserting, we are withdrawing the objection as to those claims and so -- but for now, we would ask the Court to adjourn for status the omnibus objection number 24 which is item number 13 on the docket until October 15th at 2 p.m.

THE COURT: October 15, 2 p.m. It'll be adjourned to that date.

MR. FOLEY: Your Honor, item number 14 and 15 are, again, carry overs from August 18th. As Your Honor recalls,

this -- these two omnibus objections involve what we refer to as PTO, paid time off claims. This --

THE COURT: I'm familiar with those and I think I've -- you've supplement -- you have provided the Court with a supplemental brief and the Court has got that under advisement at this time.

MR. FOLEY: Okay. So, that -- we just put it on the docket because we weren't sure if the Court was prepared to make a ruling or adjournment. Do you want -- would you like us to adjourn it for status to another hearing or just take it off the agenda this morning?

THE COURT: Let -- let's adjourn just so we have it on the calendar to the October 15 hearing date and I am confident that I'll have issued something prior to then.

MR. FOLEY: Okay. And the only -- the only additional fact that I would make the Court aware of that we became aware of after we filed our supplemental memorandum is Ms. Mosier asked -- Ms. Mosier to see if we could get some detail on one of the questions that the Court asked at the last hearing, which was were employees post-petition allowed to use paid time off -- actually take the time off and they were. As far as we are aware, she -- I would proffer her testimony that we're not aware of anybody that was denied use of paid time off. It wasn't paid out in cash and we actually have numbers of the aggregate value of what was used post-petition. Post-

petition -- and this goes through the liquidation sales, Your Honor, as well, and I'll explain how that worked -- 20,516 associates were able to use and did use paid time off post-petition before the liquidation sales were completed and that equates to an aggregate dollar value of $9,484,084.05.

Now, the way it worked after the liquidation sales began is if an associated used paid time off under the auspices of the liquidation -- liquidating agent, then the estate had to reimburse the liquidating agent for the cost of that time off and that was done as part of the liquidation sales, but that would be the only factual issue that I would -- that I would add, Your Honor.

THE COURT: Okay. And your proffering that testimony today?

MR. FOLEY: Yes, Your Honor.

THE COURT: Now, does any party wish to cross examine the proffered witness in connection with that proffered testimony?

ALL COUNSEL: (No verbal response)

THE COURT: All right. The Court will accept that proffer.

MR. FOLEY: Thank you, Your Honor, and before we get to the disclosure statement, Ms. Beam will address items number 16, 18, 19, 20 and 21 and 22 on the docket, Your Honor.

MS. BOEHM: Your Honor, Sarah Boehm from McGuire

Woods on behalf of the debtors. Item 16 on the agenda is the debtor's omnibus objection to claims which was the disallowance of certain claims through wages and compensation. This objection included 270 claims and we received 14 responses today.

Mr. Foley dealt with the 31st omnibus objection. The 32nd omnibus objection to claims dealt with the reclassification of certain claims filed by Equity Holders to interests. This included 53 claims and we've received three responses.

The 33rd omnibus objection related to the modification a reclassification of certain claims. For the vast majority of these, they were claims that were asserted as either admin, secured or priority and we've sought to reclassify them as general unsecured. That included 85 claims for which non-responses were received. One of those has already been withdrawn by a claimant. They now agree with our objection, so we're down to eight responses for that one.

The 34th omnibus objection relates to the modification of certain duplicate 503(b)(9) claims. For the most part, these included claimants who filed a 503(b)(9) claim on the 503(b)(9) claim form and then also filed another proof of claim that included that and so it just seeks to disallow the duplicate portion of that 503(b)(9) claim. That included 41 claimants who had filed duplicate claims and we received

nine responses.

The 35th omnibus objection to claims is the disallowance of certain amended and duplicate claims. This included 198 claims for which we received 17 responses. And the debtor's 36 omnibus objection is the disallowance of certain claims relating to a short-term incentive plan. This included 217 claims for which we received 18 responses.

Your Honor, our procedure was -- with this is the same as it has been with our other claim objections. Any response that we have received up until the day we submit the order, we include on the adjourned exhibit. We would ask the Court to either disallow, modify or reclassify the claims for which no response has been received for these omnibus objections and then adjourn the hearing for further status on any response received to November 3rd at 11 a.m.

THE COURT: November 3 for all of those and that would be items number 16, 18,, 19, 20, 21 and 22 on the Court's --

MS. BOEHM: Yes, Your Honor.

THE COURT: All right. Does any party wish to be heard in connection with any of those matters? Ms. Gunn?

MS. GUNN: Just briefly, Your Honor. Elizabeth Gunn appearing on behalf of HP. HP did not file an objection to the 34th omnibus objection to a claims, a response.

THE COURT: Okay. Just so that we have it straight.

The 34th --

MS. GUNN: It's number 20.

THE COURT: -- is number 20?

MS. GUNN: On the --

THE COURT: Okay.

MS. GUNN: -- on the agenda. However, primary counsel for HP and counsel for the debtor have exchanged e-mails and have agreed to amend the exhibit to their order which will be submitted to reflect on a different amount of HP's claim in the amount of $33,065,626.36. As long as the exhibit to that order reflects that number, then HP would have no further issue with that, but just wanted to clarify on the record that there are -- was an agreement to amend the exhibit to that order.

THE COURT: All right.

MS. GUNN: Thank you.

THE COURT: Ms. Gunn, is that -- I mean -- is that consistent with the debtor's view?

MS. BOEHM: Your Honor, I personally have not handled that response but whomever she has the e-mail from, I'll follow up with him and we'll make sure the order is appropriate and signed off --

THE COURT: Okay.

MS. BOEHM: -- by Ms. Gunn prior to submitting.

THE COURT: Well -- the relief will -- that we'll be

granting today will accept that claimant.

MS. BOEHM: Yes.

THE COURT: All right. Does any other party wish to be heard?

ALL COUNSEL: (No verbal response)

THE COURT: All right. Ms. Boehm, the Court will grant the debtor's motions then with regard to those docket entries and the parties that have filed responses including HP will be adjourned to the November 3rd omnibus hearing date.

MS. BOEHM: Well, Your Honor, if I understand Ms. Gunn correctly, to the extent HP's number is just modified, it doesn't need to be adjourned. It can just be ordered --

THE COURT: Well, then --

MS. BOEHM: -- with a modified --

THE COURT: -- then it can be resolved. Right. Most definitely. To the extent that there's any issue, I'll hear the issue if it needs to be heard at that time.

MS. BOEHM: Thank you, Your Honor.

THE COURT: All right.

MR. FOLEY: Thank you, Your Honor. That leaves, I think, the only items on the agenda are items number 11, a disclosure statement and items number 12 which are the solicitation procedures motion and Mr. Dickerson and Mr. Pomerantz will address those issues with the Court.

THE COURT: All right. Very good, Mr. Foley. Thank

you.

MR. DICKERSON: Good morning, Your Honor. Chris Dickerson from Skadden Arps representing the debtors. Your Honor, as Mr. Foley indicated, I'm happy to report that the debtors, as well as the Creditors Committee and I think you'll note that Mr. Pomerantz is now sitting on this side of the courtroom today.

THE COURT: I notice that everybody's abandoned this area.

MR. DICKERSON: Well, I actually view that as a good thing, Your Honor.

(Laughter)

MR. DICKERSON: I need all the -- we need all the help we can get over here, but with a -- on a more sober point to that issue is that I'm happy to report that the plan and the disclosure statement that have been submitted and filed with the Court and we're seeking approval of today is done on a co-proponent basis with the Creditor's Committee. We spent a great number of -- a great amount of time with the Committee discussing the terms of the plan, the procedures involved, the disclosure statement and all the ancillary documents and dates and so forth that are included and before Your Honor this morning.

I think generally the parties would agree that while we're not where we hoped to be when this case was filed last

November, we do think that in light of the circumstances that occurred, we have made substantial progress with getting these cases adjudicated, dealt with and out of Chapter 11 and, in fact, I'll note that we're hopeful that we will be having Your Honor confirm a plan shortly after the one-year anniversary of the petition date which I think, as Your Honor is aware and others are aware, is a fairly rapid pace so -- for a Chapter 11 case of any type, especially one of a $12 million company with as many complicated issues that it has.

And so, we're pleased that we're able to keep progress going and to allow hopefully claimants to be receiving distributions as soon as possible and that is our ultimate goal, is to insure that the appropriate amounts are disbursed to the people who are entitled to receive them.

I won't go into any detailed description of the plan unless Your Honor has specific questions, other than to say that the plan is a liquidating plan and as such, is one I'm sure that most people are familiar with the form of that and in essence it's taking the assets including any cause of action claims issues and so-forth, transferring those to a liquidating trust, a liquidating trustee being appointed to administer those assets.

In this instance, there's also a liquidating trust oversight board, seven member board, six of which who are members -- currently members of the Creditor's Committee. So,

we'll have a very great amount of experience with the case and understanding of the issues in the case who will then work with the liquidating trust as fiduciaries to the beneficiaries of the trust, all the claimants and liquidate the remaining assets of which, we're pleased to say, a large amount has been liquidated to date and I think at last estimate there was approximately $280 million worth of liquidity in the debtor's bank accounts so we're well on our way to having liquidated a large number, if you compare that to the numbers that are included in the disclosure statement as the expected recoveries.

And we -- we're hopeful that those recoveries that are in the disclosure statement are on the conservative side and the work that will be done by the debtors, the Committee, prior to confirmation, as well as the liquidating trustee after confirmation will result in recoveries in the range that's included in the disclosure statement or it -- or even exceeded. That's obviously the hope.

And I -- I'll also point out that I think its obvious, but unsecured creditors will be receiving provided that things go as we expect them, we'll be receiving a recovery in this case. Obviously it's not a hundred cents and the fervent hope had been at one point that we would be able to pay more than what's provided in the -- in the disclosure statement, but we do believe that's a meaningful recover to

those claimants and we're interested in trying to get the -- those recoveries in as soon as possible.

Your Honor, we're technically here to approve the motion that was filed to approve the disclosure statement, the notice of the disclosure statement hearing, a hearing date to consider confirmation, the procedures for filing objections to the plan, approval of the voting agent and deadlines that are related to solicitation and confirmation, procedures with respect to certain claims and then solicitation procedures for confirmation of the plan.

Those -- that's -- there's a lot of stuff involved in that motion and I'd like to highlight a few things, but unless the Court would like me to go into more detail about each of those items, I'll just try to remind what's being approved and then I'll describe some changes that have been made to the plan, the disclosure statement and the order approving the motion and then I think we -- we still do have a few objections that have not been resolved, although I'm happy to report that we've discussed, I think, with almost every party that filed an objection except for maybe one or two that we couldn't reach.

Their objections, in an effort to try to resolve them and I think we've at least done a little bit of the work or laid the groundwork for having a meaningful discussion with Your Honor so that you can make a ruling on those objections.

THE COURT: All right. Very good. And the Court had

previously reviewed the motion that you filed, as well as the disclosure statement. I have to say the -- the disclosure statement was filed to the first amended plan. The Court has hurriedly looked through that, and -- but I think that the way that you propose to proceed is appropriate.

MR. DICKERSON: Thank you, Your Honor, and I'm happy to report that the changes to both the disclosure statement and the plan itself are fairly minimal. There -- there's one that's -- and I guess more than one that I would say are substantive and important, but I will address those to clarify what's going on and then there's also -- we had filed a revised version of the solicitation procedures order last week. There's been one additional change which I'll also -- also address.

THE COURT: All right. Thank you.

MR. DICKERSON: Your Honor, the foremost task before the Court today is to approve the disclosure statement as providing adequate disclosure in accordance with Section 11:25(a)(1) of the Bankruptcy Code. I think that in short we have, in fact, the co-proponents have provided adequate information in order to -- for Your Honor to make that ruling. I think some of the objectors may have some issues with respect to whether additional information or changes should be made and we will address those when we get the objections.

So, I'm not going to request that you find that the

disclosure statement is adequate now. We'll save that to the end when we've resolved everything else.

Moving on, then, Your Honor, I think the first thing that we would like to do and I believe Your Honor's already held open the spot, is to set the con -- to approve the confirmation hearing for November 23rd. As well, we would like -- as was attached with the solicitation procedures motion to approve the form of the notice that will be sent to creditors letting them know when that hearing will occur, as well as the objection deadline and other relevant information that they may need with respect to filing an objection or taking any actions that they deem appropriate with respect to confirmation.

The -- in more -- and, in fact, Your Honor, the confirmation notice, as you may be aware, includes specific procedures that we're asking Your Honor to approve with respect to objections that provide the form of the objection, the deadline by which it needs to be filed and who it needs to be served with -- served upon.

Next, Your Honor, we would request that Kurtzman Carson Consulting the current claims and noticing agent be approved as the voting agent to tabulate ballots and to provide a result of the solicitation so that an affidavit can be entered stating whether or not we've met the statutory requirements for the plan to be confirmed.

Your Honor, in the solicitation motion and I won't go

through each of them, but there are a number of other deadlines that are requested that Your Honor approve, including the voting deadline, the exhibit filing deadline, the date by which we will mail the packages, the voting record date and the deadline to publish confirmation -- I'm sorry -- the published notice of the confirmation hearing and then most importantly, and one that I did want to point out is the deadline for the debtors to object to claims for voting purposes.

Your Honor, I think its important that in conjunction with the Committee as plan proponents that has been our fervent effort to try to allow as many people to vote on the plan as possible and I think part of the discussion that Mr. Foley had with you earlier, with respect to allow -- temporary allowance for people to at least be allowed to vote for numerosity as opposed to amount, that demonstrates that effort.

What we've done, Your Honor and what the plan and solicitation procedures provide and the disclosure statement provides is that disputed, unliquidated and contingent claims at the start are not entitled to vote, but we've provided a process pursuant to the rules to allow 3018 motions to be filed and to the extent that someone receives a notice of a non-voting status and in addition to ballots, if -- if the -- for whatever reason, the debtors and the plan proponents -- excuse me -- have determined that a creditor is not entitled to vote, they won't receive the same package. They'll receive a notice

that says we don't believe that you're entitled to vote. If that creditor believes they should be entitled to vote, then obviously, they are free to file a 3018 motion.

I'd like to point out though, in addition, Your Honor, is we hope we don't get to that point. We really don't want to spend a great deal of the Court's time arguing 3018 motions and we've included language that says, if you think you're entitled to vote, please contact us, because we're willing to work with you and work to -- towards a resolution that allows them to vote. In worse case, for numerosity reasons, if not for some agreed upon amount.

So, I -- we're taking steps -- affirmative steps to try to ensure that as many people can vote on this plan so that the -- the due process of this -- of this overall solicitation procedures is done in the best and best manner.

I guess, Your Honor, do -- I presume that you've had a chance to review the dates. Do any of them present any issue or a problem for the Court with respect to how we've separated them out? We believe we've given adequate time for various events to occur.

THE COURT: As far as the Court is concerned, the dates are acceptable. I'm not aware that any party has filed an objection to any of the dates that you have proposed. Is there any issue with regard to those dates?

MR. DICKERSON: I'm not aware of any. The only thing

that I thing that I think that may -- we may touch on we would discuss a couple of the objections. I think that there are some objectors who are concerned with knowing when -- whether the -- the dates that we've set in the plan for disputing or objecting to administrative claims whether those dates are appropriate, but with respect to the solicitation procedures dates, I'm not aware of any objection to those.

THE COURT: And that's what I was referring to, the solicitation dates. I'm aware of the other concerns in the plan but those would be more confirmation type of issues.

MR. DICKERSON: Thank you. Your Honor, then I just want to point out one other change to the ballots. We've -- we submitted forms of the ballots and we're again asking the Court to approve those. I think as Your Honor is aware, there are two classes that are entitled to vote, Class Three and Class Four. Class Three is convenience classes is the way its described and it allows claimants with claims between 500 and 1,000 -- $999 to opt into that -- to get a different distribution than if they went through the process. It allows them to get them soon -- sooner and it gives them some certainty as to the amount they're going to get.

The one change that we did make is -- in -- with respect to Class Four, there will be two forms of ballots because I think as Your Honor is also aware the creditors who have claims less than $500 are deemed to be de minimus and

therefore, don't need -- are not entitled to a distribution. Again, we wanted to allow those parties to vote and so, they will be given a ballot. Obviously, they'll be voting on whether or not to receive a -- they won't receive a distribution.

The changes is that for claimants -- for creditors who have claims in excess of a thousand dollars, they can opt into the Class Three. It would be inappropriate, the proponents believe, to allow those with less than $500 in claims to also be able to opt into Class Three because that would -- that would obviate the de minimus -- restriction on de minimus payments.

And so, the only difference between those ballots -- those two Class Four ballots would be to remove the ability of someone with a claim less than $500 to opt into Class Three. So, that's one change from the form of the ballots that we submitted to Your Honor.

As I indicated, Your Honor, we also -- we will be sending out packages, hopefully, on the 30th -- by the 30th and hopefully sooner, that will be made up depending on what class a claim falls into. Those entitled to vote will, obviously, receive ballots. They also receive a CD-Rom that has the plan and disclosure statement. It won't be a hard copy; trying to save a few trees there, but to the extent that a claimant doesn't have the ability to read the CD-Rom, it also provides a

website, the claims and noticing agent website where they can go on line and receive one and further, if that doesn't work, it also has a phone number and an address where they can contact someone who will then send them a written version of the plan, if they so desire.

Similarly, those who are either un-impaired and therefore not entitled to vote or receiving no distribution and therefore not entitled to vote, will be receiving notices of non-voting status. They also will not receive the CD-Rom, but website, the claims and noticing agent website where they can go on line and receive one and further, if that doesn't work, it also has a phone number and an address where they can contact someone who will then send them a written version of the plan, if they so desire.

Similarly, those who are either un-impaired and therefore not entitled to vote or receiving no distribution and therefore not entitled to vote, will be receiving notices of non-voting status. They also will not receive the CD-Rom, but they will receive the same information to the extent that they would like to have the plan and disclosure statement. They can either go to the web -- the KCC website or they can request it via mail or phone call and have it transmitted to them at the debtor's expense.

Your Honor, I think at that point then I've kind of laid out what I deemed to be the high points of the relief

we're requesting. I think before we get to the objections, I'd like to point out a couple of changes that were made to the solicitations procedures order, the first of which was made in the version that was filed last week, last Friday I believe and that dealt with paragraph 17 and 18 and 27 subparagraph or roman numeral five.

These additions, Your Honor, just clarify that -- and I guess I should have mentioned this at the beginning is that the plan is premised on substantive consolidation of the debtor's assets. So, we're taking the nine debtors' estates, combining them one -- into one and distributing them. I know that'll be a -- something that we may be discussing with some of the objectors but that is our premise. We wanted to clarify in the order that if someone believed that they had or has filed a claim against more than one debtor, they only get to vote once.

If they have, for example, a guaranty claim and a claim in chief against one -- two different debtors, then the -- their ballots -- even if they filed two ballots, we would only count that once for voting purposes. So, we wanted to clarify that. Also, for claims distribution purposes, as well, that's what the plan is premised on but we wanted to make sure that that was clear in the order.

The only other change, Your Honor, would be to -- and I don't believe you've seen this one -- it would be to remove

paragraph B on page two, which was a finding that was in addition to the finding already included in the order which, in essence, was a belt and suspenders type language that said, that nothing had come to Your Honor's attention that would suggest that we haven't disclosed things that we should have, nor that we've not disclosed things but the SEC had raised some concern with that. In reviewing it we determined that it really was implicit in the Court's overall finding that the disclosure statement was adequate and in order to resolve that concern, we just agreed to take that paragraph out.

THE COURT: All right. Very good.

MR. DICKERSON: Okay, Your Honor, then I think -- we have filed and I know that some of this -- the most recent filing was this morning, we filed a revised version of the plan of disclosure statement and we also filed a chart listing the objections and our proposed response for the resolution of those. I think rather than -- the easiest way to proceed would be to just move to the objections and then -- because the majority of the changes, or at least the substantive, non-material -- or material changes, related to changes that we've made in light of the -- in light of those objections.

THE COURT: All right.

MR. DICKERSON: Your Honor, did -- do you have a copy of the chart?

THE COURT: I do.

MR. DICKERSON: Okay. Your Honor, 13 objections were filed or we received 13 objections. I think that there was one with respect to Douglas County that we received it. I don't believe it was docketed but we treated it as an objection in the chart and so we will be responding to it. So, there's 13 of those objections and as I indicated earlier, we had reached out to the objectors that we could in an effort to resolve them and some of them have been resolved.

The chart, Your Honor, is laid in docket order number, so unless you would like me to do something other than that, I'll begin to go that way. I think it probably makes sense to get rid of the ones that we've resolved and then we'll leave the ones that are still open for the end.

THE COURT: That will be fine.

MR. DICKERSON: Thank you, Your Honor. The first objection was docket number 4799 from the Los Angeles County Sheriff's Department. As indicated, we think that that was just a miscommunication or a misunderstanding upon the filing -- by the filing party. It's a request for additional information --

THE COURT: I couldn't figure out what it was.

MR. DICKERSON: It -- we weren't sure either, but since it was filed, we think that we've provided adequate information in the disclosure statement to resolve any issue that they may have had and to the extent that they have further

issues, they're free to raise those at confirmation, but we're -- we think that that one should be overruled.

THE COURT: All right.

MR. DICKERSON: The next objection, Your Honor, was --

THE COURT: No, no. Do we want to take these up? Should I ask at this point if any party --

MR. DICKERSON: Oh, sure.

THE COURT: -- wants to be heard in connection with that? All right. Does any party wish to be heard in connection with the response to the Los Angeles County Sheriff's Department to Disclosure Statement?

ALL COUNSEL: (No verbal response)

THE COURT: All right. That response and to the extent it is an objection it's overruled.

MR. DICKERSON: Thank you, Your Honor. The next objection is docket number 4801 from Roto Rooter Plumbing and Drain Service and again, the -- we're -- I think this happens quite frequently is when you send notices to all creditors they -- they take the opportunity to file things so that they're -- they think that they need to re-emphasize their interests and while they don't understand the process, they take an opportunity to respond and so I think that's what happened here and, in fact, we've talked to Roto Rooter. Really it was a -- they filed an invoice for services. They agree that -- and

they've agreed to withdraw that objection. I don't believe anyone's here but we -- they've allowed us to represent that that objection has been resolved --

THE COURT: Okay.

MR. DICKERSON: -- given our conversation.

THE COURT: The Court will not that that has been resolved and will be removed from the docket.

MR. DICKERSON: Your Honor, the next objection is docket number 4834 file by Vincent E. Rhynes and as indicated the -- this really appears to be a claims objection issue in that Mr. Rhynes asserts that his claim should not be reclassified as an equity interest. Obviously, that reclassification is not coming through the disclosure statement and it doesn't touch on the adequacy of the disclosure statement. It's a claims objection and we point out that to the extent that Mr. Rhynes believes that he's improperly classified and, therefore, that raises an issue for confirmation. He's free to do that and then we also point out that the plan and the disclosure statement provide that all equity interests are being -- will receive no distribution on account of those interests.

And so, I don't believe we're able to reach Mr. Rhynes to try to resolve that issue with him but again, we would request that that objection be overruled.

THE COURT: Does any party wish to be heard in

connection with the objection filed by Vincent Rhynes?

ALL COUNSEL: (No verbal response)

THE COURT: All right. The Court has reviewed that objection, as well, and is satisfied that it is a claims objection and the objection will be overruled or -- yes.

MR. DICKERSON: Thank you, Your Honor. Your Honor, next is number -- or docket number 4827 from Antor Media Corp. As indicated in the chart Antor has a patent infringement case that was pending against the debtors at the time of the filing and is currently stayed. Again, the -- this really doesn't appear to be any -- there doesn't appear to be any issue with respect to the adequacy of the disclosure statement other than we've agreed with Antor and they've agreed that this will resolve their objection that we would note that, in fact, they have brought this case, that it's pending and that they reserve their rights in essence and the debtors reserve their rights, the estates reserve their rights with respect to any future litigation on those issues and so we've added the paragraph that you see in the right hand column in the revised disclosure statement.

THE COURT: All right. Does any party wish to be heard in connection with the Antor Media Corporation response?

ALL COUNSEL: (No verbal response)

THE COURT: All right. That -- the Court will note that that's been resolved.

MR. DICKERSON: Your Honor, the next in docket order number is Longacre but with your indulgence I'd like to pass that one to the end. That's one that's still open. The next one I'd like to address, Your Honor, are docket numbers 4948 and 4968 filed by Michael Cullen and this is one, again, that's not uncommon in Chapter 11 cases. Mr. Cullen, for some reason, mistakenly believes that he is a debtor and that we're taking actions against him. We have tried to contact him and to explain that. We were unsuccessful, but, again, we do not believe that that objection relates in any way to the inadequacy to the disclosure statement or the other relief requested in the solicitation procedures motion and would request that it be overruled.

THE COURT: All right. Does anyone wish to respond in connection with the response of Michael Cullen?

ALL COUNSEL: (No verbal response)

THE COURT: All right. The Court has reviewed that and I agree with counsel's comments about the mischaracterization of that response and that it will be to the extent it is an objection, it's overruled.

MR. DICKERSON: Thank you, Your Honor. Next is docket numbers 4977 and 4999, the objection filed by Direct TV. Direct TV's objection in essence was that they wanted to ensure that nothing in the disclosure statement or plan would impair their set-off rights. I think as Mr. Pomerantz would agree, we

have taken pains to ensure that the disclosure statement and plan -- and the plan more importantly, do not impair anyone's set-off rights and, in fact, this was a subject of discussion with the Committee as we proposed the -- as we proposed the plan or we drafted the plan and we've ensured that there will be a period upon which the debtors have to bring a set-off action as within any other claims objection.

And then, after that period is passed, the only follow on ability for the debtors or the liquidating trustee to use set-off against a claimant would be if set-off is raised by the other party and hadn't been raised before. And so, we're basically preserving the claimant's abilities to set-off and limiting the debtors ability -- the estate's ability to use those in a defensive manner while trying to preserve them to the extent that it was unaware that -- that someone was going to be bringing a claim and asserting set-off so that we can preserve those rights.

We've inserted some language specifically about Direct TV so that they would be -- they would withdraw their objection and again, we spoke with them and they have indicated that we could represent to Your Honor that the inclusion of the language that's included in the column that will resolve their objection.

THE COURT: All right. Very good. That'll be resolved.

MR. DICKERSON: Next, Your Honor, is Schimenti Construction Company, docket number 4980 and 5004. As Your Honor may be aware, Schimenti has alleged that they have certain rights to funds held by the debtors that they -- they assert are being held in trust, retainage and so forth and they wanted to ensure that nothing in the plan would prohibit them from -- to the extent that they were successful from recovering those assets that were held in trust and weren't assets to the estate. As, I'm sure Your Honor would expect, the plan proponents agree that to the extent that Schimenti is successful and having this court or another court or competent jurisdiction determine that those amounts, in fact, were not property of the estate and were held in trust for Schimenti, then nothing in the plan or the disclosure statement effects their ability to bring that.

We've added again, some language that describes their claim and then further language that says that they will be entitled to bring an adversary proceeding with respect to this issue. I think as Your Honor may be aware, they had filed a 2004 motion but not yet have filed an adversary claim. We agree that -- that in light of that pending 2004 motion and it going forward that their claim is preserved with respect to the adversary complaint and that they're free to bring that complaint in accordance with applicable law and with -- in light of those additions to the disclosure statement, again, we

spoke with Schimenti and they've agreed that that would resolve their objection.

THE COURT: All right. Very good. The Court will mark that one as resolved, as well.

MR. DICKERSON: Your Honor, the next is Generation H One LP which had joined in the Longacre so I'll just pass that one for now and we'll move to the remainder. I believe the next is 4983 and Henrico County, Virginia is the objector. Your Honor may be aware that -- and Henrico County has filed claims with respect to some secured amounts -- property -- that relate, I believe, to property taxes and it's both the secured claim and a priority tax claim.

We and entered into a stipulation with them with respect to those amounts. We have also objected to those -- to certain of those claims. That process is pending, as we go through the claims objection process, but in the stipulation we had agreed to escrow the funds -- the top end of the funds which is approximately -- a little over approximately $3 million and we have, in fact, done that. I do have to -- I did want to let the Court know that we hadn't done that until -- and Henrico County reminded us that we needed to do that, but when they did remind us, we had -- we have done that and so the -- those funds are in a segregated account.

As I indicated, it's about $3 million. We have over $280 million in the other accounts that the debtor controls.

So, there was never any question that those were protected but we have complied with the stipulation and have escrowed those funds and will continue to escrow those funds pending the resolution of the claims objection.

I'm not sure if -- if that completely resolves the County's objections, but I believe it does, but I know that they're represented in Court today and --

THE COURT: All right. Ms. South, do you wish to be heard?

MS. SOUTH: Thank you, Your Honor. Rhysa South for Henrico County, Virginia. Yes, Your Honor, our primary concern was that the plan didn't indicate that those funds had been escrowed. I understand that that's been taken care of now and with the other changes that had been made on the amended claims admitted today, that resolves the County's objections.

THE COURT: All right. Thank you, ma'am.

MS. SOUTH: Thank you.

THE COURT: All right. So, that -- docket number 89 -- 4983 will be resolved.

MR. DICKERSON: Thank you, Your Honor. Next is Bethesda, but again, that one joins in Longacre and with that I would like to pass that one. I think we just have a couple little others that we can dispose of. Your Honor, next was an informal inquiry that we got -- that we received from the -- actually this is the one that we received in writing but it --

we don't believe that it has been docketed. I -- we do think it was filed so --

THE COURT: I don't believe I'm familiar with this one.

MR. DICKERSON: In any event, Your Honor, we've treated it as an objection and I'll be happy to describe it. I'm not sure they're represented in court today, but I -- I think we can resolve the objection. They, again, assert that they have a miscellaneous secured claim and provide that the plan does not describe what happens in the event that there isn't sufficient funds to actually do what the plan says it would do which is unimpair them and pay them in full and --

THE COURT: Is this a secured tax claim? Is that what it says?

MR. DICKERSON: Yes, Your Honor.

THE COURT: Okay.

MR. DICKERSON: And -- and so, what they would like is for us to set out in the plan and disclosure statement what happens if, in fact, that class is unimpaired. The plan proponents believe that's inappropriate, that that's really a -- it might be a confirmation objection but probably is an objection or the subject of some other pleading at the point when that were to happen. It would be, obviously, very difficult for us to put into the disclosure statement and plan procedures for every potential outcome in these cases.

We believe that the plan provides for the appropriate dealing with miscellaneous secured claims, that there are sufficient and will be sufficient funds to pay them in full and, therefore, unimpair them and so it is not necessary at this point to describe what would happen if we failed to meet one of the fundamental premises that the plan is -- has been founded upon.

And so, we believe that the disclosure -- in the disclosure statement about the treatment of miscellaneous secured claims and the treatment in the plan itself are appropriate and that the -- the disclosure's therefore adequate.

THE COURT: All right. Very good. Does any party wish to be heard on the informal objection by the Treasurer of Douglas County, Colorado?

ALL COUNSEL: (No verbal response)

THE COURT: All right. That objection will be overruled.

MR. DICKERSON: Thank you, Your Honor. The last one before we get to the Longacre related objections is from -- again, I believe this -- this shows that it was not docketed but I actually think it -- there may have been a letter docketed this morning and so that it hasn't caught up and unfortunately don't know the docket number, but it's from Mr. Peter Gresens, who I believe is in Court today and he -- the

essence of his objection is that he'd like to know whether or not the debtors intend to object to employees claims under the debtor's retention plans and whether such claims are administrative.

Your Honor, I -- similarly to the previous statement is that we believe that the plan and the disclosure statement in particular are -- give a significant enough or a adequate enough description of how we are treating claims of various classes, but it would be inappropriate for us to, in essence, provide legal strategy to creditors or other counter parties with respect to what we intend to object to and why and what the result would be.

The onus and the bar dates that are in effect and the objection deadlines there with respect to the claims process are there so that that process may be done outside of really the disclosure statement and plan and we would assert that that is the appropriate place for those types of issues to be -- to be dealt with.

I will say though that if Mr. Gresens has questions about his claims, he's free to contact the debtors and we're happy to discuss them with him. Obviously the onus is now upon the debtors to object to those claims and if we do intend to reclassify them to take affirmative steps to do so. So, unless we do that, Mr. Gresens will have the claims that he -- that he's asserted through the proof of claim process.

THE COURT: Okay. So, as I understand this, this is a claim that has been filed to which no objection has been made and the question or -- that has been raised in the objection is whether or not an objection might be forthcoming in the future.

MR. DICKERSON: That -- that's right, Your Honor, and just to be clear, I'm not sure -- and again, he's here -- if he's actually filed a claim or if it's one of those claims to which we had scheduled and, therefore, no proof of claim is required, but I think Mr. Gresens is looking for more information about the ultimate resolution of his claim and what type of claim he will have.

THE COURT: All right. Very good. Mr. Gresens, do you wish to be heard on your objection?

MR. GRESENS: Your Honor -- I think, Your Honor, I just wanted to clarify --

THE COURT: Okay. Why don't you come to the podium then, sir?

MR. GRESENS: -- because --

THE COURT: Before you begin, what I want you to do is state your name for the record, please?

MR. GRESENS: Okay. Peter M. Gresens and I'm a former manager within Circuit City.

THE COURT: Okay. Thank you, sir.

MR. GRESENS: A group of employees have contacted me just regarding the retention agreements that were put in place

sometime ago and just getting those on the record as part of the administrative claims. We actually file -- did file administrative claims back in June with the Court --

THE COURT: Okay. Are you --

MR. GRESENS: -- so that they would be of record.

THE COURT: -- an attorney?

MR. GRESENS: I am not.

THE COURT: Okay. So you can represent yourself but you can't represent the group. So --

MR. GRESENS: I -- I just wanted to --

THE COURT: -- just do it from the stand point --

MR. GRESENS: -- bring the issue up because I know people --

THE COURT: Thank you. That's fine.

MR. GRESENS: I'm sorry. I have no idea what I'm -- excuse me. Excuse me.

UNIDENTIFIED MALE SPEAKER: You're doing fine. Doing fine.

THE COURT: You're actually doing very well. So, that --

MR. GRESENS: Oh, thank you. So, anyway, I looked at the plan and I said -- I -- I don't understand how these are going to be resolved and before we go to voting in November on the ultimate plan, I wanted to figure out what -- what's going to happen with these and that's why I brought it up today and I

didn't know whether this was the appropriate point or not but I said -- I actually tried to contact a number of attorneys in Richmond and it's a challenge right now because everyone has a conflict and so we're looking for other counsel now to help us with this but I wanted to make sure we didn't lose out on anything by not responding. So --

THE COURT: Okay. Thank you very much. All right.

MR. GRESENS: Okay. Thank you very much.

THE COURT: All right. The -- I don't think that there's an issue here from a disclosure statement standpoint. I think this is more of a claims objection type of issue and you know I certainly would encourage you, Mr. Gresens, to contact counsel and get representation for your group going forward as you may very well need that, but as far as the disclosure statement is concerned, I think that the information contained is adequate from this standpoint and this is just a different issue. So, the objection will be overruled.

MR. DICKERSON: Thank you, Your Honor. Your Honor, I think that brings us back to the Longacre objection and the joinders thereto. I will note that a couple of the joinders had raised a couple of additional items, so, I thought I would deal first with the Longacre objection and the similarities with respect to the -- that issue and then we'll deal with the other one off issues that the other objectors had.

THE COURT: All right. And I have reviewed these

objections, as well as your responses.

MR. DICKERSON: Okay. Thank you, Your Honor. In essence, I believe and, obviously, Longacre will have a -- I believe is in the courtroom will have an opportunity to speak that the -- that, in fact, Longacre raised an issue -- a real issue and pointed out that the plan as drafted appeared to not provide for the payment of allowed administrative claims on the effective date which is required by the Code by Section 11:25(a)(6), I believe.

Your Honor, I think part of that believe was a little bit of difficulty parsing through the language of the -- of the plan and the disclosure statement as is typical with these. There's a lot of defined terms and cross referencing that you have to do, so, let me --

THE COURT: And when you went to the definition, you had to go through a whole new article.

MR. DICKERSON: That's right, Your Honor. That's very -- it can be very convoluted and I'm -- I'd love to find a better way to do it, but unfortunately we haven't gotten there yet.

In any event, the plan an disclosure statement currently provides or at the -- prior to this hearing provided that a lot of administrative claims would be paid on the earlier of the first distribution date, capital "D", capital "D", following allowance, or no later than 90 days after

allowance and when you looked at the definition of distribution date, you learned that initial distribution date was included in that definition.

So, if someone has an allowed administrative claim as we sit here today, the plan is confirmed on November 23rd. Ten days later, if we're so lucky, the plan goes effective. The initial distribution date is five days after the effective date which allows the debtors -- or excuse me -- allows the liquidating trustee to set up the accounts and have the money moved over, will then be paid. If that was all the language that was there and what Longacre and the other objectors, I think, raise, is a valid point, is that there was a proviso at the end of the section that held because of the legitimate concerned raised by the Committee that if the liquidating trustee determined, as he was preparing to make a distribution on those allowed claims, that there wasn't enough money to ultimately play -- pay all allowed admin claims, that he wouldn't make a distribution and that's for the very real concern is that you don't want to have to pay out to some people and then have to go back and ask for disgorgement if the -- the unexpected happened and there wasn't enough to pay all the allowed admin claims.

Your Honor, the debtors are highly confident and I think that -- that is premised by the fact that we're here with a plan that -- that's not a very real or likely possibility

that we wouldn't be able to pay all allowed admin claims. As I said, we have $280 million in cash. Currently, we're about to receive the proceeds of the sale of the Canadian subsidiary which is another significant chunk and we also believe that we have very good objections to a number of claims that will then reduce the overall claims pool.

Not a -- not unexpectedly, the Committee while they've been involved in the case hasn't had access to all information that the debtor's have. We're continuing to work with them to try to get them that information and in order to kind of meet the time frame, this little bit of accelerated time frame, is they'd ask that we include that language so that if the unexpected happened that -- that we didn't find ourselves in front of Your Honor seeking to have admin claims disgorged.

The problem with that, obviously, is pointed out by the objectors is that 11:25(a)(6) doesn't say that you can do that. It says that you have to pay allowed admin claims on the effective date. The way that I believe that most Chapter 11 estates deal with this issue is if there not yet there, then they'll take a little more time before they actually file the plan and seek to have it confirmed and go forward.

What we've done and what we've -- how we've modified the plan and modified the disclosure statement as provided is to -- is to not slow down the process. I guess one of our

options would have been to adjourn the hearing today and wait until the Committee was fully in the same place we were and in agreement that there's very, very risk that we would ever be unable to pay a lot of admin claims, but we wouldn't -- didn't want to do that because we do, as I know that -- that the Committee does, we do want to get the process going as quickly as possible so that people can get the distributions that they're entitled.

And so, what we did is remove that proviso, deleted it in its entirety and -- and we have added a condition to the confirmation of the plan and you'll note -- this is on Page 3 of the chart in the right-hand column -- that provides that in order for confirmation to occur the Creditor's Committee shall have determined in its reasonable judgement that the liquidating trust will have sufficient available cash to pay or reserve for as the case may be the face amount of all administrative claims that the Creditor's Committee believes will ultimately become allowed.

And so, really what this does, Your Honor, is it moves -- it allows the Committee to continue to work during the solicitation procedures -- or the solicitation process -- solicitation period in order to get to the place where the debtors are today and that's that -- convince themselves that there's no chance that we won't be able -- not that there's no chance but there's very, very little chance that we would be in

a situation in which there wasn't sufficient funds to pay allowed admin claims.

With that, Your Honor, we -- we believe that that should result in a resolution of both Longacre's and the other objectors who joined in that portion of Longacre's claim. I note that I believe the -- that kind of related to that, Longacre had objected that because we couldn't prove that all admin claims would be paid in full that their impaired and therefore the plan was inappropriate. The response to that, Your Honor, is that's a confirmation objection, not -- not to use that old canard inappropriately, but I think that it's inappropriate at a disclosure statement hearing or with respect to the disclosure statement to require an estate to prove that they will -- when all things are said and done pay every last admin claim. There are safeguards built into the process that to the extent that -- that we ever get in that unfortunate situation that will allow recourse for -- for people that find themselves there but it would be impossible for people to confirm plans if that was the -- if that was the standard by which they had to operate.

And so, we believe that in the debtor's business judgment and I believe that ultimately in the -- our co-proponent's judgment, we will be able to meet the standard which is that as fiduciaries for the creditors and other parties in interest, that it's appropriate to move forward and

that it is much more likely than not that all allowed admin claims that will be paid in full.

THE COURT: What is the page of the disclosure statement that you've made that change to?

MR. DICKERSON: Well, it will be -- actually, it will be included in the plan in -- on Page 30 in Section 8(a)(5) and then I believe it has a -- it's also obviously be put in the similar section of the disclosure statement as a condition to the --

THE COURT: Well, I've got the plan. We can go there.

MR. DICKERSON: Okay.

THE COURT: What page of the plan?

MR. DICKERSON: I believe it's Page 30, Your Honor and Section -- Article 8(a)(5). Yeah.

UNIDENTIFIED MALE SPEAKER: It's on Page 13 of the plan.

MR. DICKERSON: No, no. It's the addition.

UNIDENTIFIED MALE SPEAKER: Oh, okay.

MR. DICKERSON: I'm looking at the black line, Your Honor. It's on Page 29 of the black line and it's the -- the new number five as a condition to confirmation.

THE COURT: Okay. I don't have the black line plan here, but I have the original plan and your adding that paragraph right after Paragraph 4?

MR. DICKERSON: That's correct, Your Honor.

THE COURT: Okay.

MR. DICKERSON: If -- would you like me to provide you with the black line?

THE COURT: That would be wonderful if you have an extra copy.

MR. DICKERSON: Yes, Your Honor. Can you get me another one?

THE COURT: Thank you.

MR. DICKERSON: And then, similarly, Your Honor, on -- the language is struck on Page 13 of the black line in Article 3(a)(1), the notwithstanding language has been removed.

THE COURT: All right. So, is it envisioned then that this will have to have been resolved at the confirmation hearing or is this something that would occur even after the confirmation hearing that the Creditor's Committee would make this determination?

MR. DICKERSON: It would have to be before confirmation occurs, Your Honor. That --

THE COURT: That's what I -- okay.

MR. DICKERSON: There is no latitude for post --

THE COURT: It's a condition to confirmation.

MR. DICKERSON: -- condition to confirmation --

THE COURT: That's how I understood it.

MR. DICKERSON: -- there is no post confirmation or

post effective day latitude. Once we've confirmed and gone effective, then if you've got allowed admin claims, then you're getting paid at the next distribution date. It might be the initial one or 90 days, whichever's earlier.

THE COURT: All right. Very good.

MR. DICKERSON: Your Honor, I think probably it would make sense to allow Longacre now, to respond if they'd like, unless you have other questions?

THE COURT: Okay. I think Mr. Pomerantz would like to --

MR. DICKERSON: Oh, I'm sorry. Mr. Pomerantz would like to -- to help me.

(Laughter)

MR. POMERANTZ: Good morning, Your Honor. Jeffrey Pomerantz from Pachulski, Stang, Ziehl & Jones representing the Creditor's Committee. The Committee is hopeful based upon the information that the debtor and their advisors who provided to date that the estate is administratively solvent and it will be able to make not only distributions to administrative and priority creditors, but also meaningful distribution to unsecured creditors.

However, we believe -- and for that reason, we believed it was important to start the plan confirmation process as soon as possible. Time is money and the quicker we can get to confirmation, the quicker we can hopefully make

distributions, the lower the burden rate could be and hopefully that will enure to the advantage of all creditors.

However, at the time we were filing the plan disclosure statement, we wanted to have safeguards in the plan in the event that there wasn't sufficient money to make administrative payments on the effect of it to allow the claims and for that reason we put in the language, that was the notwithstanding language, that has drawn objection by several creditors.

As a result of the objections and the discussions with the debtor, we believed we could address both the objecting parties concerns that a plan not go -- not be confirmed unless administrative creditors were assured that there would be payment on allowed claims and at the same time give the Committee flexibility and in essence delay the ultimate determination for several weeks.

As Your Honor's aware, there are now 47 sets of objections that have been filed. There is different assets that are supposed to come in before confirmation and the debtor has pledged that over the next few weeks to provide additional information to the Committee and their advisors to enable the Committee, hopefully, to get as comfortable with the debtor as the debtor is with respect to administrative and solvency.

We expect to do that over the next several weeks and to the extent we are comfortable that the estate is

administratively solvent, we will then acknowledge to the Court that that condition has been satisfied and intend to proceed as confirmation.

If for some reason we do not believe -- we are not comfortable at that point, ultimately, we may be looking at an -- a continuance of the confirmation hearing. But again, we are hopeful that the debtor will get us to the point where they are and so as not to delay the process, we thought that this fix both addressed the concerns of the objecting parties and gave the Committee the flexibility that needed to address the issue in several weeks when we will all be a lot smarter based upon information as it develops.

THE COURT: Isn't the resolution of this outstanding issue a feasibility issue, as far as plan confirmation is concerned?

MR. POMERANTZ: Yes, in sense it is a confirmation issue. I think largely I think it's a fair point raised by the objectors that it was unclear in the document whether and when allowed administrative claims will be paid I think by eliminating the notwithstanding language. I think we addressed the disclosure issue but, in essence, Your Honor is right. The Committee will have to make the determination and it, ultimately Your Honor, will have to make a determination of whether there was sufficient money to pay administrative claims at that point and we are in essence delaying the issue until

confirmation but addressing the disclosure issue at the same time.

THE COURT: Very good. Thank you.

MR. POMERANTZ: Thank you, Your Honor.

THE COURT: All right. Does any other party wish to be heard in connection with the Longacre objection?

MR. FOSTER: Yes, Your Honor. Good afternoon, Your Honor. Matt Foster from Pepper Hamilton on behalf of Longacre Opportunity Fund. Your Honor, before we get into the actual objection itself, we previously filed a motion for pro hac vice admission for Jim Kerrigan who is prepared today to do the argument. I don't know if the Court has actually ruled on that. If not, I'd ask that the Court grant him pro hac vice admission to be able to argue the objection today.

THE COURT: Okay. And I don't know whether I -- I've ruled yet either, so I apologize, but yes, the motion will be granted for purposes today.

MR. FOSTER: Thank you, Your Honor.

THE COURT: Okay. Mr. Kerrigan, welcome to the Court.

MR. KERRIGAN: Thank you, Your Honor. For the record, James Kerrigan of Pepper Hamilton in Wilmington, Delaware appearing on behalf of Longacre Opportunity Fund, LP and I appreciate the Court's permission for me to speak here today.

Prior to the hearing today on the train, counsel for the debtors and the Committee very graciously reached out to me and advised me of the modifications they had made to the disclosure statement and plan, particularly now distributions on account of allowed administrative claims are to be made within a short window of the effective date to permit the documents to be signed up and to permit the liquidating trust to be funded and also that the official Committee of Unsecured Creditors will make a determination as a prerequisite to confirmation that they believe that the trust assets will be sufficient to pay allowed administrative claims in full and I appreciate them reaching out for me -- reaching out to me for the -- on those points and I think it does go to several of the bases of Longacre's objection, but I think it's worth noting, Your Honor, that even as modified when we get to the confirmation hearing and even when we get to the effective date, the amount of this estate's administrative claims, liability will still be an estimate.

I note that additional condition to confirmation still says -- still says that the Committee believes that the allowed amount -- there will be sufficient funds to take care of administrative claims liability and, you know, it's worth noting, Your Honor, that it'll be an estimate as of the confirmation hearing on both sides of the equation.

THE COURT: Well, actually it says, "The Committee

will have determined in its reasonable judgment . . .” so it’s not just a belief.

MR. KERRIGAN: But it still will be an -- an estimate. It won’t be -- the Committee will have determined that the estates now have sufficient funds to pay the face -- facial amount of administrative claims and I believe the last clause of that sentence and I’m sorry I don’t have it in front of me that the Committee believes will ultimately be allowed.

THE COURT: You’re exactly right. It says, “The Committee believes it will ultimately become allowed.”

MR. KERRIGAN: So, the effect of that, Your Honor, is that there’s still a significant degree of uncertainty and then in -- in listening to the Court I understand the Court’s concern -- look, 11:29 and 9 objections are confirmation objections. They’re not adequate assurance objections. It is a legal matter believed the Fourth Circuit has held that it’s a -- it’s proper for a Bankruptcy Court to at least consider the confirmability of a plan of reorganization in a Chapter 11 case at the disclosure statement hearing.

THE COURT: Where has the Fourth Circuit said that?

MR. KERRIGAN: Oh, forgive me, Your Honor. It was the -- it was this court, the Bankruptcy Court in the Peck case wherein the Court held -- and I’m sorry I don’t have the Judge --

THE COURT: It was Judge Shelley.

MR. KERRIGAN: "If a Court can determine from the reading of the plan that it does not comply with Section 11:29 that it is incumbent upon the Court to decline approval of the disclosure statement." And as a practical matter, I think that makes sense, Your Honor, for -- for the reasons --

THE COURT: Well, the facts in Peck, though, I mean, let's - in fairness and put that case in perspective. I mean, what happened there was you have a plan that had gone to confirmation and it got before Judge Shelley and Judge Shelley said he would not confirm the plan because equity was going to be retaining an interest and it violated the absolute priority rule and so he -- he refused to confirm the plan and then parties came back -- the debtors came back and submitted, basically exactly the same plan the second time and Judge Shelley, you know, and that was the context in which he wrote the Peck decision. He said, you know, why are we going to go through a whole solicitation process again when this is exactly the same plan that I've already ruled on that, you know, that it's not unconfirmable.

So, it's a little bit different issue than what we've got here.

MR. KERRIGAN: Well, the Court's absolute --

THE COURT: Because I haven't ruled on whether or not its confirmable or not.

MR. KERRIGAN: Oh, the Court's exactly right. In

that case, they knew it wasn't confirmable. Here we don't know if it's confirmable and that really goes to the crux of Longacre's remaining concerns and I would point out as a practical matter that if a disclosure statement's approved, then the debtor might go through the whole entire solicitation process for a plan that might not ultimately be confirmed.

So, I think the far better approach, Your Honor, would be to fix this administrative claims liability in advance of the confirmation hearing. That way, the parties will know, the administrative claimants will know, the Court will know, at least one half of the equation, what is the universe of administrative claims exposure of this estate and can it be taken care of with the assets or the potential assets that are going to be available to the trust and I don't see any practical reason why they can't do that and I know they've been diligent, especially the last few months. They've been filing objections and been trying to reconcile administrative claims and 503(b)(9) claims and I appreciate that, but I think that would be the -- that would be the better approach so that all the parties in interest are on the same page as of confirmation.

Your Honor, that goes to -- that argument, I suppose, goes to allowed administrative claims. That doesn't say anything with respect to claims such as that owned by my client which are pending administrative claims. The disclosure

statement and plan does provide that there will be a objection deadline for administrative claims of four months or -- excuse me -- right, 120 days after the effective date, but that, of course, the debtors are -- or the trust -- excuse me -- is permitted to request an extension of that deadline for good cause. In my relatively short career, Your Honor, I've never had a liquidating trust that was actually able to object to all of the claims it thought it could within the deadline set forth in the plan.

So, my remaining concerns and, again, I appreciate their modifications in response to our objection. I appreciate their reaching out to me. My remaining concerns are with respect to timing. I think that, as it reads now, client -- creditors and my client's position do not have any assurances about whether and when they'll be paid nor even whether and when objections to their claims will be made. Thank you, Your Honor.

THE COURT: All right. Thank you very much, Mr. Kerrigan. Does any other party wish to be heard in connection with the Longacre objection? Mr. Epps?

MR. EPPS: Good afternoon, Your Honor. A.C. Epps, Jr. on behalf of Generation H One and Two, Limited Partnership and various other objectors. Your Honor, the debtors and their Committee have also reached out to us and discussed the proposed changes and so forth with regard to the -- our

objection to the administrative claim issue.

I am here on behalf of our clients to say that while there remains some uncertainty, we've agreed to withdrawal that portion of the objection we filed. The portion that piggybacked on the Longacre objection --

THE COURT: All right.

MR. EPPS: -- and that we are satisfied with the changes that the debtor's made.

THE COURT: All right. You -- and your objection, you also had some that went to the substantive consolidation --

MR. EPPS: That's correct. By Mr. --

THE COURT: -- and those will appear later.

MR. EPPS: -- but -- like the debtor is going to discuss that in a few minutes, I gather. Thank you.

THE COURT: Okay. Very good.

MR. EPPS: But as to this part, we are withdrawing out objection. Thank you.

THE COURT: Okay. Thank you, sir. Yes, sir?

MR. KERRIGAN: Good afternoon, Your Honor. Daniel Kerrigan, McKenna, Long and Aldridge for Bethesda Softworks, LLC. We also would like to thank the debtors and the Committee for reaching out to us and we appreciate the effort and I think in the process of doing that, the informational aspects of our objection to our response have been clarified, not necessarily to our satisfaction, but at least we know where -- where things

are coming from and if I could, Your Honor, if Your Honor would look at our response, if the Court has a copy, and I could probably go through and say to the Court well, at least what we understand given the changes that have been made to the disclosure statement and the plan and -- and our conversations which I'm not holding anybody to, anything other than the -- that's where they are.

THE COURT: I've got your objection right here in front of me, sir.

MR. KERRIGAN: Thank you, Your Honor. 7(a), this is whether the plan contemplates the Bankruptcy Code 702(d) will be applied to the allowance of both administrative expenses including Bankruptcy Code Section 503(b)(9) administrative expenses, and general unsecured claims and cites to the prior disclosure statement. If we understand this -- the response here, correctly, from both the chart and our conversations this morning, the answer is yes and it -- at least for a period of 90 days or longer, if -- if that time period is extended.

This is without any court deciding in this -- in -- Your Honor deciding whether or not 702(d) actually does apply or not and --

THE COURT: Well, they're just preserving their rights. So, they're not saying it does apply. They're just reserving their right to make the claim that it applies.

MR. KERRIGAN: No, Your Honor, definitionally it says

that it applies because it defines -- when you work through as Your Honor said the claims -- the definition of claims and this definition and that definition, at the end of the day 502(d) is going to apply to prevent any distributions to allow administrative claims at least through that 90-day period and longer without a decision by the Court.

THE COURT: Well, I'm going to want to hear counsel on that. That's not the way I read that, but I -- I thought that it was just making a provision that they would preserve their right to make that claim.

MR. KERRIGAN: Definitionally, it says -- it defines claim to include administrative claims, which is -- which is an error in itself and it's an error in particular with respect to Section 502(d). Your Honor, if I may provide to the Court and this -- its instructive for a number of reasons, a decision of the Second Circuit, not the Fourth Circuit, Your Honor, but the Second Circuit this past Friday.

THE COURT: It's a good Circuit.

MR. KERRIGAN: May I approach, Your Honor?

THE COURT: Yes.

MR. KERRIGAN: This is in the Ames case, Your Honor, and it -- it probably and it probably has not hit the published list yet, but it basically decides that the 502(d) does not apply to Section 503(b)(9) or any other administrative claims to prevent a distribution and -- but in a lot of ways, the

point is, if you -- if the Court looks at the date of that decision, it took a year from the time that it was argued to the time that it was decided. Some of that probably was occasion by Justice Sotomayor's leading the Second Circuit because she was a member of the panel initially.

But it also, if you look back to the time when the obligations were incurred and the objections were filed, it took six years to get to that result. Now, if -- if we -- if -- and this ties to another provision of the -- of the plan that we identified in the -- in the disclosure statement, which is (e), whether the plan contemplates that a 503(b)(9) administrative expense will be deemed to be disputed whether or not an objection has been filed.

So, definitionally, under the plan as articulated in the disclosure statement, even though no objection to a -- an -- to an administrative expense or a 503(b)(9) administrative expense has been filed, we remain a disputed claim and unless and until the debt -- in this case, either the debtor, I suppose the Committee or post confirmation, the liquidating trust objects. Now, our point is simply this --

THE COURT: But they got a bar date upon which they have to object.

MR. KERRIGAN: Unless it's extended.

THE COURT: Right.

MR. KERRIGAN: But -- but if they object then, then

it goes out further and if the time to -- to render a decision or to get a decision or to make a decision with respect to the -- to the 502(d) issue is extended, it goes out even further and -- and all along, the assumption is that it is a disputed claim into the subject of 502(d). What we want -- the point we want to make is we understand that now, Your Honor, and we understand that is the case and that is a confirmation issue now as to whether or not that's an appropriate provision of the plan, whether it's satisfies as we -- we've articulated in our objection to separate provisions of the 11:29.

THE COURT: The problem -- the disconnect I'm having here is -- is that I had understood that the 502(d) issue that was raised, when I read the disclosure statement and plan initially was just one where the debtor was preserving its right to make that claim. Rather than having that be resolved in the context of the plan, can you walk me through how you get to that conclusion because that was --

MR. KERRIGAN: I'll try, Your Honor. I can't guarantee that I can.

THE COURT: Okay.

MR. KERRIGAN: But I think the place you start is the provision. I think it's the special provision on Section 502(d).

THE COURT: And are you looking at the plan now or are you looking at the disclosure statement.

MR. KERRIGAN: I will look at whichever the Court prefers.

THE COURT: Well, I've got the -- the plan right here, so why don't we look at the plan.

MR. KERRIGAN: All right, Your Honor. And if the Court will bear with me, I'll look at the index so I can find it. I believe it is Article 3, Treatment of Claims in Interest. In the prior version of the -- of the plan, it was at Page 16.

THE COURT: Okay. Now, it looks like its on Page 14 and 15 of the amended.

MR. KERRIGAN: And it says, "Notwithstanding anything to the contrary in the plan, the liquidating trustee may only use Bankruptcy Code, Section 502(d) as a basis for refusing to make a distribution to a holder of a claim that is subject to a pending Section 502(d) objection until the earlier of 90 days after the effective date or entry of an order establishing some other deadline."

Well, but let's look back to the definition of a claim and "A claim has the meaning set forth in the Bankruptcy Code, Section 101.5." You then go to Section 502(d) and that's where the -- the "claim" where the Code says, that the -- that a claim cannot be allowed, much less paid, cannot be allowed until -- unless and until there has been a repayment of -- let me read it rather than guess at it. "Notwithstanding (a) and

(b), the Court shall disallow -- shall disallow any claim of any entity for property which is recoverable under the various sections where there is a transferee of an avoidable transfer."

So, that -- that -- where we start out and claim, if we understand it from the plan and I've heard no - no dispute, the claim includes administrative expenses under the plan. The effect of all that is to make 502(d) applicable and useable either in negotiations or litigation, at least for 90 days after the filing and beyond, if that -- if that period is -- is extended and from our perspective, Judge, we know that now and we can live with that -- not that we like it but it -- it clearly is a confirmation objection at this stage. So, we wanted to highlight it for the Court and we also wanted to highlight it because under the confirmation standards, under 11:29 is it -- there's two provisions of the confirmation standards that are implicated and one is 11:29(a)(1) and the other is 11:29(a)(9)(A) and what we want to be clear about, Your Honor, is if the Court approves the plan and if that provision becomes binding is that we have not agreed to that treatment and that's what the plan and the disclosure statement warned, essentially, that if this plan is confirmed that is the way that you treat -- claim is going to be treated and that, in fact, as a practical matter, you've agreed to it and you're stuck with it. We do not agree to it and we want it clear that we're free to challenge that if we -- and we believe that issue

ought to be resolved, frankly, prior to the -- to the confirmation of the plan and that -- it -- it's our understanding that -- that the plan provisions, the disclosure provisions leave open the possibility that that will occur or that -- or that it will -- they will try to get that decision made.

But let's say for example that -- that the debtor files a motion to have a determination as to whether or not 502(d) is applicable to administrative expenses or not? And let's assume that it takes time for the Court to decide that issue because look at what -- what the Second Circuit in Ames did? Look how long it took to get from the Bankruptcy Court through the District Court to the Court of Appeals and to get a decision. It took an awful long time.

So, we could be standing out there for an awfully long time because if the debtor were -- if the debtor or the Committee or the liquidating trust were to prevail on that issue, we could be waiting, we're stuck with it, that's what's going to happen and we're going to be standing still while all the other administrative expenses that are not subject to 502(d) exceptions are being paid.

THE COURT: But there's a provision in the plan that provides for them to reserve for that right?

MR. KERRIGAN: Well, a reserve? Does that mean a book reserve or does that mean actually dollars? Does that

mean parking the money and creating an escrow account? I think counsel eluded to one of the ways that you deal with these kinds of situations in Chapter 11 plans or with liquidating trusts or what have you. Well, one of the ways you deal with them is not only kicking the can down the road, in terms of allowing or deciding the claims. The other way is you escrow the money and if we understand it correctly, everybody seems now to think, notwithstanding what's in the disclosure statement, which says, gee, we really don't know whether it's going to happen or not and you got to be real careful and we're not guaranteeing anything and I don't see the word "disgorgement" in here anywhere, as a matter of fact, but now they're saying is that, you know, we're pretty certain that this is going to work. Well, fine.

Shouldn't they be disclosing to the people who are affected by it, and to the Court? I mean, if that's the case, we may have a different view of this whole thing. If it really is going to be that way, I mean, the ultimate protection is, they park the money. They've got $290 million. There's more coming in. Great. Fabulous. Park the money. They estimate that the 503(b)(9) claims are $200 million. I think if you look at the Appendix C to the -- to the disclosure statement, they have an estimate for administrative claims and they have an estimate for various other sorts of things that if we understand it correctly, you ought to transpose back to the

Chapter 11 confirmation system and there would be plenty of money to park it and leave it there.

THE COURT: Okay.

MR. KERRIGAN: But no one's willing to step up and say that at this point and put their money where their mouth is which is to really put the money aside and leave it there and then whatever time it takes to get through it, get through it.

Secondly, the modification that is made has been made and we welcome the modifications. We think it's a step in the right direction and we appreciate the effort, the Committee and everybody else to get there.

But we have to recognize one thing, that Committee doesn't represent us. In fact, they can't represent us and it's the same reason that the Committee that it -- that in the -- in the Fleming case that Judge Walrath appointed a separate committee for folks like us because they don't -- they're obligation is to the Unsecured Creditor's Committee and a lot of their people probably are administrative expense holders and probably are 503(b)(9) holders. So, on an individual hat, they have an interest on both sides of the equation, but the Unsecured Creditor's Committee, what they're trying to do is maximize the distribution to unsecured creditors. That's what they're trying to do and -- and that -- they've done it effectively, I suppose, because this looked like it was a -- maybe an administrative insolvency at one point.

So, we don't have a problem with that. What we're saying is, is that the -- the judgement here is trust the Creditor's Committee even though they don't represent you and at some level we're willing to do that. We'd trust them a lot more, of course, if the money was actually parked and available and in that regard, if I can return to the objections of the responses, and like I said, I think -- I think the informational aspect of this has been addressed and we appreciate that and now at least we know what we're dealing with.

So, the second is, whether the plan proponents contemplate the allowance and payment -- oh, may I just add -- add one other thing to this allowed versus disputed aspect, which we'll come to a little bit later, as well.

And the irony is, that as of the effective date, unsecured creditors are better off than administrative creditors are in this respect because unsecured creditors whose claims have not been objected to are deemed allowed, whereas administrative creditors whose claims have neither been objected to or not objected to are disputed.

So, as of the effective date, the date when we're -- when administrative creditors, at least the allowed amounts are to be paid, are disputed and unsecured creditors are allowed. It -- it's somewhat schizophrenic and ironic and it may just be a -- it may just be a result of the complexity of bankruptcy

and the -- and the forms and the definitions and all the other things that go into it, but it occurred to me as counsel was making the argument is, at the -- at the effective date, there are (indiscernible 12:34:43) patients that kick in, that the effective date there are releases that kick in, at the effective date the professionals for the debtors and the professionals for the committees sever their relationships with the -- with the debtors and with the process and the one thing it says in the code that has to happen as of the effective date, isn't going to happen and -- but that, again, that's an issue for confirmation and we respectfully suggest it and we appreciate the fact that we've gotten the answers, at least insofar as -- as the questions we asked.

Whether the plan proponents contemplate the allowance and payment of any administrative expenses prior to the effective date of the plan, the answer to that is yes. They certainly do and again, we think now that becomes a confirmation issue because going back to the very beginning of the case and this is outlined in the disclosure statement in the earlier parts they list the accomplishments or the achievements in the Chapter 11 case.

Well, many of those achievements under the first day orders and things that came shortly after that were to pay a variety of people whose claims have equal priority to ours or lower priority than ours and there were articulable reasons for

doing it at the time. Frankly, they -- there were humane issues to doing it at the time and we didn't oppose those and -- and they shouldn't have been opposed because they were the right thing to do at the time.

It doesn't change the fact that a lot of people in this case and a lot of entities in this case who have administrative claims or lower priority claims have been paid and we have been standing here for the last year having provided the goods which turned into money which paid the -- the expenses of getting ready for the bankruptcy and helped pay the banks off, the secured creditors in this case.

THE COURT: Well, the claim that comes immediately to mind would be the rent claims for landlords, which are paid on a timely basis monthly.

MR. KERRIGAN: Correct and the professional fees. The 25 out of 30 million have been paid according to the operating reports.

THE COURT: Well --

MR. KERRIGAN: I don't have a problem with that.

THE COURT: All right.

MR. KERRIGAN: We're not suggesting --

THE COURT: Well, then what --

MR. KERRIGAN: -- there is a problem.

THE COURT: -- what --

MR. KERRIGAN: All we're suggest --

THE COURT: That's what I was going to ask. Is there a problem with that?

MR. KERRIGAN: The only problem is -- comes up and I think counsel eluded to it, is disgorgement. I mean, the fact is when we get to the end as of the --

THE COURT: Well, that's only if you don't get paid in full.

MR. KERRIGAN: Well, that's right, but if we're going to have a moratorium on payments to administrative expenses, maybe I think -- maybe what we should be thinking about is a moratorium on everybody getting -- not getting paid in the interim, but that's a confirmation issue, Your Honor --

THE COURT: All right.

MR. KERRIGAN: -- not a disclosure issue. The calendar month and year in which the effective date is expected to occur, well, the answer to this appears to be they don't know. They can't guess. They don't have enough information. Well, if they don't have enough information, we certainly don't have enough information and that also goes to the -- to the issue about the Creditor's Committee making a decision with respect to the plan going effective or not and goes to the decision of whether people are comfortable that there's enough money in the pot, so-to-speak, to take care of the administrative claims and -- and the way that arises is, if it -- if they don't know yet, if their not certain yet, if they

haven't had access to the information yet, how far further down the chain are we, in terms of the information that's -- that's been available? How are we expected to make a decision about that and in that regard, Your Honor, and this covers really the -- the Paragraph F of our response, if the Court looks at Appendix C, the liquidation analysis and I don't know if the Court has a copy of the -- the most recent operating report? I think this was based on the -- on the June 30 -- the month ending June 30 operating report to the extent --

THE COURT: I have the Exhibit C. I don't have the operating report.

MR. KERRIGAN: Your Honor, I have the one for ending June 30. May I give it to the --

THE COURT: You may.

MR. KERRIGAN: Thank you, Your Honor. And it's -- it's obviously made of record in the Court.

THE COURT: Thank you.

MR. KERRIGAN: And my figures are going to be off because I'm working from the July 31st but they're in the -- plus or minus they're in the ball -- pretty much in the ball park. Well, according to this, the 503(b)(9) -- this is in -- in Subsection D or Section D. The 503(b)(9) claims are between --

THE COURT: Which page are we looking at?

MR. KERRIGAN: I'm sorry. The very first page of the

Appendix C, the liquidation analysis.

THE COURT: Oh, the -- okay. I'm there.

MR. KERRIGAN: I'm sorry, Your Honor. And I -- what I was comparing this to were, what I believe were the balance sheet that's in the operating report and also the -- the section of the operating report that deals with accounts receivable aging. In the liquidation analysis, it has 503(b)(9) claims as being between 170 and 200 million.

THE COURT: I see that.

MR. KERRIGAN: And -- and that's not all that far away, by the way, Your Honor, when the debtors ask for an extension of the (indiscernible 12:39:49) period, the first extension, I believe they estimated that the dollars were in the $210 million, $230 million range. So, plus or minus it's in the ballpark.

So, at that point in February, they had an idea that it was in the $200 million range, at least, and now that's been somewhat confirmed. It also, up above, in the (a) estimated proceeds from sale of assets, it has 275 million of cash and cash equivalents and if you look at the -- at the operating report and the balance sheet and you -- you add the cash held by Bank of America and the cash and cash equivalents, you get 283, so that's -- I think someone used the figure 290, so that's in the ballpark as to what they -- what they have now.

But here's where the big difference comes. Accounts

receivable net, in the case of a liquidation, 59,700,000 to 83 million. On the operating report, let's -- let's skip to the -- from the balance sheet over to the AR -- receivables report. There they have total accounts receivable in my version of about 450 -- 455 million, most of which are in the 91 plus category. All right? They may be -- the numbers might be slightly different on the prior month and they have a million dollars or $1.1 million of -- of un -- in a amount considered uncollectable and the AR's net for $454 million on the -- as of July 31st in my -- in my version and that's going to drop 82 to 87 percent in the event of a liquidation. You'd expect some drop. You expect maybe a substantial drop, but almost the -- some -- something, you know, in the mid to -- mid-80 percent range. Now, this is going to liquidation still after the -- after the plan if the plan -- significant class --

THE COURT: Well, if they're wrong there, that only improves the recovery, doesn't it?

MR. KERRIGAN: No, Your Honor. If they're wrong, then there's no -- that that money isn't going to be in the pot. If they're wrong about -- they say it's 455, but now they're saying in a liquidation scenario, it's 59,7, well that starts to make that -- that cash and cash equivalents look a little skinny especially if you're funding the liquidating trust and you're paying administrative expenses between now and the time the liquidating trust takes over and you're paying the

expenses of the liquidating trust ahead of administrative claims in this case.

It's not a question that can't be answered. It simply raises questions about and -- and looking and doing the analysis -- now, I understand that the operating reports are gap and all that, but on the other hand, these folks have been in liquidation for the better part of -- well, since January, I suppose when we were here and they announced that they were laying off virtually all the remaining employees.

So, this is -- this number, if it's in the -- if it's in the -- in the balance sheets, that's all we have to go on. Comparing those numbers is really distressing and concerning. Now, if it -- if it's not an accurate number, then fine. Tell us what it is going to be. That's all we're really asking. So, on that -- on that score, Your Honor, I don't believe that we have got an answer as to really -- and in fact, the -- the provisions that have been incorporated into the plan and the disclosure statement about the need for the committee to -- as they should in any exercise of their fiduciary duties as they're doing, to take a look at it and make sure that those monies are really going to be there or they think they're really going to be there or they make a determination, whatever it is, what we're saying now is that we don't really know and if they don't know, how can we know?

And if -- and if that's part of the exercise, then --

of confirming a plan and providing adequate information, then it's -- we should be given some sort of comfort that that's -- that's the case and it's possible, if I may suggest, that through communication between the Committee and folks that are in my client's situation, that we can -- we can get that kind of comfort and I hope not to be standing here at confirmation objecting, but I did want the Court to understand what our concern was and why the concern was articulated in something we consider fairly extreme that is objecting to a disclosure statement.

With respect to the time periods and whether those are necessary because they don't have enough money or it may not have enough money as of the time, the answer, I believe, in the -- in the chart is that, no, it's to -- it's to give them time to -- in an orderly fashion go through and determine which claims should be allowed and which claims should not be allowed.

If I may, Your Honor, as a group, I mean, this is like a lot of other things, when you look at it at the whole, that sounds like a perfectly reasonable explanation. When you look at it from the context of -- of our client's claim and, perhaps, the Longacre claim and perhaps others, including perhaps the landlords -- the Stub Rent dispute, is it really necessary that there be a -- have been all that -- all this time and more time yet.

For example and in -- I'm not holding anybody the -- to admitting the -- that we're right and we have the allowed claim based on what's here, but the fact is, is that our folks had a $3.8 million claim on the day of the filing and that our folks filed a reclamation claim with the documentation to back that up in accordance with the -- this Court's order as and when it was -- was required and actually beforehand because we sent the reclamation notice immediately upon hearing of the bankruptcy.

We then filed our 503(b)(9) administrative claim in the form that the debtors promulgated and the Court approved and -- and the timing and that was back in, I believe June -- I think the first -- it was either December or January. I get this and October -- mixed up and since then, we've been the subject of two objections and the two objections have basically been to the -- to the fact that we filed duplicate claims or that we -- and the second one was to the fact that our general unsecured claim, which again, was timely filed and really incorporated all the other stuff that we've provided, was incorporated not only the piece that we thought was unsecured, but the piece that could become unsecured if an objection to our administrative claim was successful.

That's a sum total. Now, we've been through a bunch of other objections and they've -- they've done, what 40-some now, and we haven't shown up again and -- and some of those

objections have dealt with the -- the sort of substantive issues on 503(b)(9) whether they're goods involved, whether they're services involved, whether they're within the 20-day period. What's not been covered in those objections? 502(d), no preference claims. That's what's not been covered.

So, that's again why we felt it necessary to ask whether we could be in jeopardy of agreeing to the applicability of 502(d) because as we see it, that's the only impediment of getting us allowed and that would be the impediment to getting us paid five days after the effective date and for a company like ours and this is not in the record, but you could look up our company on the -- our client on the internet, it's public dodged, but we're not a public company. Three point eight million dollars means a whole lot to them in any time, especially if the effective day, for example, was before the end of the year. If it was say, December 15th and five days after December 15th a nice Christmas present for this company and it's employees would be $3.8 million dollars in cash.

That's why it's important to us. That's why it's in here. But again, we think now that it's -- it's more of a confirmation issue than a disclosure issue and I think that -- that really is the sum of where we are and I -- and I think, unfortunately, through this process of objecting and responding to the -- to the disclosure statement and parsing through all

this stuff and trying to figure out as the Court apparently did, as well, to try to figure out how the definitions all meld together, we wound up with -- with the information that we were looking for and we're not thrilled with the result but we have the information and we -- we may have to go to the next stage.

Hopefully, what will happen over the next couple of weeks may resolve these, as well. There will be more security that in -- and warm and fuzzy feeling, if you will, that there's going to be enough money there to pay the administrative claims, regardless of the what the number is in the assets.

But those are the reasons that we filed and we seek the information and those are the reasons that, unless they're resolved, we're going to wind up objecting to the plan, as well. Thank you, Your Honor.

THE COURT: Thank you, Mr. Kerrigan. Does any other party wish to be heard in connection with the Longacre Opportunity Fund objection? You wish to respond?

MR. DICKERSON: Yes, Your Honor, although, I'm -- I had hoped to -- had -- with respect to Bethesda's counsel, I think -- we were trying to get the common issue resolved first, the Longacre and the two -- the joinder and it seems that we've segued off into the 502(d) and some other issues, but -- so, I would like to -- would you like me to go back to the issue we were originally discussing or would you like me to deal with

the 502(d) issue now or us to deal with the 502(d) issue because I think Mr. Pomerantz will handle that?

THE COURT: Okay. I think that first --

MR. DICKERSON: Although I --

THE COURT: -- I'd like you to go --

MR. DICKERSON: I'm sorry. Excuse me for -- go ahead, Your Honor.

THE COURT: I'd like you to go back and address the issue that you had raised and then we can go into the 502(d) issue.

MR. DICKERSON: Thank you, Your Honor. And I was just going to add, although I do think that Bethesda's counsel's did admit that with respect to disclosure he had no objection. So, I'm not sure how much time we need to go back and revisit those issues. Although it probably is worthwhile because, unfortunately, I think that Bethesda's counsel has misinterpreted the language and, in fact, we agree with Your Honor's interpretation of it, but again, we'll be happy to walk through that in just a minute.

THE COURT: Okay.

MR. DICKERSON: Your Honor, with respect to the original issue with -- about paying allowed admin claims as the effective date and I just had a couple points in response to Longacre's counsel. It seems -- if I'm understanding the position right, is that Longacre's counsel is arguing for a

situation in which all admin claims would be determined and allowed or determined and then paid on the effective which is an impossibility.

Clearly, there will be administrative claims that are being incurred all the way through confirmation and, so, we can't -- we have the catch 22 of how do you have a bar date when the period in which you could have an admin claim hasn't passed and so, we would respectfully submit that that type of a -- that type of a set-up is not one that -- that's permissible because you can't do it. It's impossible.

And the -- what we have done and what we believe is the standard for this Court and for other courts and, in fact, it's the standard adopted by, I believe, this Court and other courts, is that we have provided the time periods in which object -- which admin claims may be filed. In fact, we've got a second one. That is 60 days after the effective date so that gives people time after the -- after confirmation has occurred to look back and see if they have any claim that's related to an -- entitled to administrative expense priority and then file that claim and then we've given what we believe is reasonable and actually at the urging of the Committee is shorter than we had --

(Recording Skipped Forward)

MR. DICKERSON: -- a period of time within which to object to those claims to the extent that we deem them to be

improper, another 60 days. And so, we are committed to all the parties in interest and this Court to have a process that's knowable and is reasonable under the circumstances, to allow allowed claims, allowed admin claims to be paid as soon as possible and practicable. Now, I think an underlying part of this argument is that the 503(b)(9) claim is they're unhappy that they -- that we have not yet challenged or commenced the adversary proceeding necessary to determine for this Court to determine whether the 503(b)(9)claims are allowed administrative claims.

We have a deadline by which we need to have brought those claims. If we don't do that, then they will have been allowed and so, we again have set up a process that is fair. It may not be as fast as some of the individual claimants clearly would like it to be, but we do believe its fair and reasonable under the circumstances and in light of that and in light of the change that we've made that -- that says to the extent that your -- and we expect and it's our intent to have commenced the 503(b)(9) issue prior to the confirmation hearing.

Whether it's finalized by then or not, I don't know, but we're not -- just as we're fiduciaries to all the parties in interest including them, but it -- we can't obviously pay any junior claims until the admin claims are dealt with. And so, it would be inappropriate and in violation of our fiduciary

duties now and the liquidating trust fiduciary duties afterwards if it didn't prosecute these in a -- in an orderly and a -- in a speedily fashion and so, that's what we intend to do.

So, in light of the changes that we've made to the -- to the plan and disclosure statement, we believe that that fully addresses those as appropriate under applicable law with respect to the payment of the admin claims.

THE COURT: All right. Thank you.

MR. POMERANTZ: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. POMERANTZ: Jeffrey Pomerantz again. Your Honor, there is always uncertainty in the process. There's uncertainty in what proceeds will be available for -- from liquidation of assets to prosecution of causes of action and there's uncertainty because of the status of the claims process. That's by definition any Chapter 11 case and if a debtor and a Committee needed to wait until everything would be resolved you would find cases lasting years.

THE COURT: Six years.

MR. POMERANTZ: On the other hand, the Committee has been focused and concerned about the issues that counsel raises. The issue of to what extent there will be money available to pay administrative creditors because if the administrative creditors can't be paid, then unsecured

creditors can't -- won't be paid.

Now, the Committee in this case is comprised of a number of trade creditors, many of which have large 503(b)(9) claims. So, during the process of negotiating the plan with the debtor, we have been extremely mindful of the issues that are facing administrative creditors because, again, several many of the Committee members have such claims.

Because of that we put in the provisions that allowed they're not to be distributions until there was sufficient money to pay all and had modified it as we talked about today. We are very concerned about payment of administrative claims prior to confirmation and other than claims in the ordinary course, rent, utilities, professionals and other things that are ongoing, we have told the debtor we don't think is appropriate until the administrative solvency is clarified and demonstrated to the Committee's satisfaction, that administrative claims be paid other than the ordinary course and we believe that the debtor is -- understands our concern and we would not expect there to be any administrative claim payments requested to be paid prior to confirmation.

We don't want to go down the disgorgement path. That's not fun for anyone and for that reason we will not want the plan to be confirmed if it can't demonstrate that there is sufficient money to pay.

Now, whether the plan -- whether the debtor and the

plan proponents will have the ability to pay all administrative claims is a confirmation issue. We have negotiated for the right for the Committee to have, in essence, a veto right. If it doesn't pass the Committee's satisfaction, we never come before Your Honor. However, if we pass the Committee's satisfaction, all parties will have the ability to present to Your Honor the arguments of whether we have satisfied the standards for confirmation. Your Honor will have the ultimate determination.

So, counsel has commented several times about the Committee ultimately be the arbor of this decision and he doesn't have the information we don't have or what we have, ultimately Your Honor is the arbor of that decision and in connection with discovery, any objecting party can seek discovery on that particular issue and we again our hopeful that as the time comes that the debtor and the planned performance will be able to demonstrate that there is sufficient money to pay such claims.

I want to give the Court a little background on the 502(d) issue, because given the make-up of the Committee, it was very important that nothing in the plan address the issue of the use of 502(d) to apply to 503(b)(9) claims. We're aware of the case law out there, of the disputes among -- surrounding the issue and the initial drafts of the plan we received were not identifying 502(d) as such, could have been read to

ultimately have the plan make the decision.

We didn't think that was appropriate. We knew this would be an issue. We knew this would be an issue that would have to be brought to the Court's attention and our goal was to have it brought to the Court's attention in a timely manner in which case creditor's can respond on the use of 502(d), the debtor could have its position and Your Honor would ultimately make the decision.

We still had to deal with the plan on what is going to happen right after confirmation. The plan provides that for 120 days, all claims, not just administrative claims as counsel misstated, but all claims are not allowed unless they're specifically allowed. That by definition has to be the case because as we said, administrative claims will be filed up until the confirmation date. There has to be a period of time.

We specifically picked the 90-day period as a date before the end of the 120-day period. So, this Court, at the latest, 90 days after confirmation will be asked to make a determination of the use of 502(d). If the Court has not made that determination, 502(d) will not be able to be used to apply to apply to 503(b)(9) claims. That is what the language says.

THE COURT: And that's the provision in --

MR. POMERANTZ: In F.

THE COURT: -- Paragraph F.

MR. POMERANTZ: Correct. So, while it is being read

to do the opposite, in fact it was read to protect administrative creditors, put a time limit by which this issue had to be decided. We are hopeful and we've encouraged the debtor to file the motion prior to confirmation so then that it could be addressed, but we had to have upon confirmation, we had to have some guidance in the plan to the liquidating trustee. Can he make distributions or not? And since claims were not going to be deemed allowed for 120 days anyway, we figured use the 90-day period here to get this issue resolved.

So, again, it's sort of ironic that the language which we so strongly fought for is now being looked at as a detriment to administrative creditors. We actually read it in the -- it was intended to be a benefit to administrative creditors to get the issue resolved.

So, Your Honor, we think that the plan issues that are on the table are confirmation issues. Your Honor, will ultimately make -- have to make the determination of whether there's sufficient money to pay admin claims and let this plan go effective. None of the issues raised really fall to the disclosure statement basis. We hope, with continuing dialog with the objecting parties that we can get them comfortable on the issues. We hope the debtor will get us comfortable on the issues and if not, we will all be back here in November to argue the same things, but we believe that based upon the changes that we made, based upon the provisions in the plan how

they're intended and actually how they read, that Your Honor can find that the disclosure statement contains adequate information and preserve all issue -- other issues to confirmation.

THE COURT: All right. Thank you. Does any other party wish to be heard in connection with the 502(d) issue?

ALL COUNSEL: (No verbal response)

THE COURT: All right. You may proceed.

MR. DICKERSON: Thank you, Your Honor. Your Honor, because it's been prefaced by Bethesda's counsel, I thought I'd just finish with the rest of their objection and then we'll move back to the one remaining objection, I believe it -- just with respect to consolidation.

THE COURT: Okay. And that's Item K that's on the response on the agenda.

MR. DICKERSON: I believe so, Your Honor. Bethesda is K. That's correct. On Page 6 of the chart.

THE COURT: Right.

MR. DICKERSON: And some of which I think we've covered but just to be clear and, again, I believe that Bethesda's counsel said with respect to all these issues and he agrees that they're confirmation issues and that disclosure has been appropriate, but just to let the Court know what we've done we've actually added some language with respect to some of these and in an effort to try to address those as well.

At -- the first is one that was just addressed, whether Bethesda had requested that the disclosure statement state whether the debtor's intend to assert that 502(d) applies to the 503(b)(9) claims. I think as Mr. Pomerantz indicated and as the debtor's intend to do, we intend to tee-up that issue shortly. We obviously are aware of the Second Circuit case on that issue and to the extent that we are dilatory in bringing it, then there are dates within the -- in the plan that would prevent us from bringing such a claim.

So, that it isn't an opened ended situation and we -- we agree and understand the same interpretation of the plan that Mr. Pomerantz indicated is that, in fact, 502(d) only applies if we get Your Honor to say that it applies and on the time frame set forth.

The next objection they had -- Bethesda had was with -- that the disclosure statement should state whether debtor's allow or pay any administrative expenses prior to the effective date and if so, to whom. The disclosure statement, in fact, does have language that indicates that we intend to pay ordinary course administrative claims as they become due. I don't think that there's any further disclosure. I think that Your Honor is aware that the Committee is aware of admin claims that are being paid.

We have included a proviso that says that all parties reserve their rights to the payment of such ordinary course

administrative expenses and, in addition and one change that's not reflected in the chart, is where repeating that language is that all parties in interest reserve the right to object to not only ordinary course but the payment of any administrative claim. And so, we think all parties and interested rights are preserved there.

The next objection was that the disclosure statement should state the month and year in which the effective date is anticipated to occur. Your Honor, I wish I would be able to give that precision. I think I can express and the disclosure statement does express the expectation, if the confirmation hearing occurs on November 23rd and we're allow -- we're successful and Your Honor confirms the plan, we will have a ten-day appeal period with which to wait and hopefully we will go effective shortly thereafter.

We can't be any more precise than that. Obviously, there's a number of variables included and we have inserted language to that effect into the disclosure statement that says when the confirmation hearing is -- is scheduled to occur and the -- once the conditions to go effective have been met, then we will promptly go effective.

The next part of the objection was that the disclosure statement should state whether the time periods and procedures associated with the allowance and payment of the Bankruptcy Code Section 503(b)(9) are necessary. Your Honor, I

-- we have inserted, again, propose to insert language that says that Article 3 of the plan provides for the time periods, not just for 503(b)(9) claims, obviously, but with respect to all claims, all administrative claims and sets the bar dates for -- for those claims to be brought and for us to challenge those claims. With two bar dates, obviously, one has passed, and but there's a second one and then there's a 120 days post effective date period in which the debtors or the liquidating trustee actually could object to those claims filed before the second bar date.

The next one was that the disclosure statement should state whether the plan being to the Bankruptcy Code a 503(b)(9) claim is disputed, even if an objection has not been filed. I think that Bethesda's counsel touched on this a little bit and although I think he was slightly incorrect in his interpretation of the plan, the plan with respect to all claims, administrative claims included, but again, that's -- they are not subsumed in the same definition, but both the administrative claims and other claims are disputed unless they're allowed and so, we tried to make that simple and it -- and while I stated it simply, as you can imagine, the -- it is a difficult concept because there are any ways that you can dispute a claim by listing it on the schedules, by filing an objection, and there is language in both the plan and disclosure statement that lays out how things are disputed but

really when it comes down to it, is if it's not allowed if you don't have something that shows that it's allowed, then it is disputed and so, with respect to Bethesda's 503(b)(9) claim, because it has not been allowed, it is disputed.

And we are adding language that says exactly that in Section G of the introduction of the disclosure statement, "A claim, including the 503(b)(9) claim, is a disputed claim unless it has been allowed pursuant to the plan."

The next is, the disclosure statement should state whether payment is full of -- as -- whether payment in full of administrative claims is dependent on collection of accounts receivable or the collection of proceeds from a cause of action. That's a very real possibility, Your Honor, and we believe that the disclosure statement provides that. It does not state contrary to, I think the wishes of some people, but it's kind of an untenable wish, that we have not collected all of and liquidated all of the assets.

We expect and we are comfortable that allowed -- that by the time we get to the effective date, allowed administrative claims, there would be more than enough cash on hand to pay those and, again, as we mentioned earlier, we expect and hope that the Committee will be in the same position, otherwise we won't go forward with confirmation.

So, with respect to admin claims, how we monetize the assets in order to be able to pay them, that is dependent on

continuing to liquidate the assets, but when we get to confirmation, as Mr. Pomerantz provided, unless Your Honor is satisfied that we have sufficient assets to have -- to be confirmed then -- and to pay those admin claims, then we won't -- you won't confirm. So, you will be the ultimate determiner of that issue.

I think that is the end of the Bethesda claims or objections and so, unless Your Honor has any questions or if -- I'd ask that that one be addressed unless you'd like to wait until you've heard the rest of the one remaining objection?

THE COURT: Well, what I heard Mr. Kerrigan say was that from the informational aspect that he was satisfied with the disclosure statement. He didn't necessarily like what it said and was reserving his rights to object at confirmation and as far as confirmation issues, but as far as the information was concerned that the information was there and just for the record, yes, I interpret Section F as just preserving the right to claim a 502(d) objection to a 503(b)(9) claim not as establishing that.

MR. DICKERSON: Thank you, Your Honor, and again, that was the intent.

THE COURT: Right. So, with that understanding, then, the objection to -- that was filed Bethesda Softworks will be overruled.

MR. DICKERSON: Your Honor, and I think that the

Longacre objection also has been argued and can be ruled if you -- if you like unless you would like to reserve that one for the end?

THE COURT: No, I'm satisfied with the Longacre Opportunity Fund that that has been addressed, as well with the stricken language and with the additional language that has been inserted into the disclosure statement and so that objection be resolved, as well.

MR. DICKERSON: Thank you, Your Honor. I think that -- that leaves us with the remaining objection of Generation H One LP. That, again, is docket number 49815 and 5003.

THE COURT: Right.

MR. DICKERSON: And that objection is whether or not substantive consolidation is appropriate and whether or not the disclosure statement provides adequate information with respect to substantive consolidation.

THE COURT: And as I understand it, what they were interested in is a little bit of the extensive analysis that you represented that you had done.

MR. DICKERSON: Thank you, Your Honor. I also had a similar understanding of their concern and I would -- I would point out that, I guess, at the outset is that commencing -- and I'm looking at the black line of the disclosure statement on Page 31. There is one, two, three -- three and a half or so pages of disclosure with respect to substantive consolidation

and it sets forth the position of the plan proponents, so not just the debtors, but the Committee as well, that substantive consolidation in these cases is appropriate.

I guess I should back up a little bit, Your Honor, is that, again, we believe that this is a confirmation objection issue and we agree that everyone's rights are preserved with respect to raising it again at the confirmation hearing.

What we attempted to do in the disclosure statement is provide to those people entitled to vote under the plan, which is who we're required to have provided adequate disclosure, information about how we arrived at the decision to substantively consolidate the assets and we believe that in that three and a half pages we go through the details of how we arrived and as you might imagine, Your Honor, the analysis is one that once you begin it and you determine that you have met a basic threshold for even considering substantive consolidation and I guess I would in that category how difficult it is to disentangle the books and records of the debtors and whether or not its clearly on its face going to be a disproportionate -- have a disproportionate effect on certain creditors to -- and to the benefit of certain others.

Once you begin to get to at least that threshold then you become -- your confronted with the decision of how much further do you go to try to actually disentangle and it -- expend the assets which would -- could otherwise be used for

distribution to creditors.

The debtors did do those analysis -- analyses and with the Committee's agreement, determined that they had met the burden and they will show at confirmation to the extent necessary, both in our -- in the papers and so-forth, that under the circumstances, substantive consolidation is appropriate.

With respect to adding more detail with respect to our analysis, again, we could have made the disclosure statement 1,000 pages long by putting in all the numbers and letting everybody come to their own conclusions. We are fiduciaries. The Committee's the fiduciary to its constituency and we did the analysis and came and believe we've met the appropriate standards that are required to be met for substantive consolidation.

And we did not include the -- multiple pages of the various debtor's books and records and inter-company receivables and affidavits with respect to whether or not the subsidiaries held themselves out as being independent from Circuit City as a whole and so forth. We, instead, arrived at what we believe is a thorough description of how we -- the analysis we did and was -- and with anything in the disclosure statement or plan, we encourage anyone who has an issue and would like to discuss with us how we did that analysis and requires more detail to contact us and we will discuss it with

them and provide them with the information necessary for them to ensure that we've met our burden and that we, in fact, it -- and whether it's in fact appropriate for Your Honor to confirm the plan as a substantively consolidated plan.

And so, we think that the disclosure in the disclosure statement is adequate on that point and would request that Your Honor agree with us and to overrule Generation HP's objection on that point.

THE COURT: All right. Thank you. Mr. Epps, do you wish to be heard on your objection?

MR. EPPS: I do, Your Honor. Good afternoon, again, Your Honor. A.C. Epps, Jr. on behalf of Generation H One and Two and the other objectors. Your Honor, I will try to be brief. I don't want the Court to infer from my brevity that I don't take this very seriously, but I think it can be said quite shortly, but I believe in this very, very deeply.

Your Honor, as the Court may know, our firm has represented over a hundred landlords in this case. There have been all sorts and conditions of landlords. They have all the various different subsidiaries as their tenants and some have guaranties and some don't have guaranties.

The schedule is to tell a story that there is a substantial difference between the subs and the parent in terms of the closeness to solvency. Schedules are, as you and I both know, just schedules and you try but they often may not tell

the real story and I understand that.

However, several of the objectors have Circuit City West Coast as their tenant. Circuit City West Coast has schedules that are much stronger than some of the others. It is impossible for someone from one of these debtors to tell from what is said in this disclosure statement whether it is in their best interest to vote for the plan.

In that regard, I take very strong exception to Mr. Dickerson's assertion that this is really a confirmation issue. This is the quintessential disclosure issue because I haven't -- I have and, indeed, most of my clients have no opinion on the underlying issue of substantive consolidation. They can't have an opinion. They don't know anything. What they're being told if this disclosure statement is approved in its current form is essentially we have spent a lot of money and time agonizing over this and we think it's the right answer, trust us.

Well, I don't think that's good enough and the reason I don't think it's good enough is that they have, in fact, done the analysis. I realize that their postulate axiom assumptions and so-forth that go into this and that they are a Committee and that the debtor's are somewhat worried about putting this out because there are so many assumptions that would go into the issue of whether what the numbers really should be. It's a little bit like a liquidation analysis although I could see

that its more complicated.

Mr. Dickerson said that he thought it was adequate without having a 1,000 page disclosure statement and without having page after page after page of schedules and I do too, but I certainly think there's a middle ground. We know because we have been told in the draft of the disclosure statement that numbers have been run that factors have been considered. Some of the factors indeed are in here, with it numbers are -- have been run, that show that the costs are substantial to not -- to failing to consolidate substantively and that creditors are not very far apart in treatment once all of the issues are unwound, but it isn't here.

There is absolutely nothing here that would tell a landlord or a creditor of Circuit City West Coast for example, why this is in his best interest other than, trust me, it's in your best interest.

THE COURT: So, what are you looking for? Are you looking for a liquidation analysis by debtor?

MR. EPPS: I think there should be some summary of what the difference is -- they think the differences would be to creditors between if they were stand-alone and if they're substantively consolidated because if you look at the package as a whole without the expense and headache of administering separate estates, one or two of these subsidiaries are almost solvent and the estimate for the package is somewhere between

zero and 13 and a half percent. Now, that's a --

THE COURT: Which are the ones that are solvent?

MR. EPPS: Well, I didn't say they were solvent, but I said they were -- I didn't mean to say they were solvent. I said, they're almost --

THE COURT: Almost. Oh, okay.

MR. EPPS: Well, Circuit City West Coast, particularly, but there's been a calculation that that disappears because of various and -- factors raised, calculations, cerebrations, and so-forth, none of which has been shared with us. I don't think it takes more than a page or two, but I need to have my various landlords be able to decide for themselves whether they should vote for it and so these are quintessential disclosure statement issues, as far as I'm concerned.

As I say, I am not anti-substantive consolidation. Indeed, because I have so many landlords on so many sides, I mean, I'd be able to take a position at the, you know, at the final hearing. This is my position, to try to give people some information so they can make their vote because this is nothing but several different law firms, all good, and several different consultants, are all excellent, have cerebrated and think you should do this and I don't think I'm asking for something that's impossible. I believe you're talking about two or three summary tables and some paragraphs and that's all,

but I -- the debtor and the Committee don't want to do that and I think they should and I think they should and I don't think -- I don't want to stand in front of an express train, and I've been known to -- been accused of doing that for a living and I don't want this to be another express train, but I don't think I'm wrong and I'd ask the Court to consider this and I think it can be done without disrupting their schedule and we can have a confirmation hearing -- a successful confirmation hearing on Thanksgiving week and get it done. Thank you, Your Honor.

THE COURT: All right. Thank you, Mr. Epps. Mr. Dickerson, does the debtor have a -- has it done this analysis of the stand alone versus the substantively consolidated.

MR. DICKERSON: Yes, Your Honor. Okay. And we describe --

THE COURT: Okay. And --

MR. DICKERSON: -- we describe it in the disclosure statement on Page 34 of the blackline. We also have offered to give Generation One and Two's counsel access to that and we agreed to give that access to him as quickly as he would like to start to have access to it. We note that the voting deadline is November 10th and we would expect that if we are not -- do not live up to our word with respect to providing that analysis, then he is free to come to this Court and explain that we did not do that and that would be an issue that will taken under consideration when its time for confirmation.

I'd point out that in -- on Page 34, we described that specifically that West Coast -- the issue that -- that was raised by Generation's counsel is that West Coast, just on its schedules, looks like it could be close to solvency, but when we described it that's, in fact, not the case because those schedules do not take into account the reconciliation of royalty payments for intellectual property, nor does it take into account the administrative costs that the subsidiaries are required to pay back to Circuit City, Inc. for maintaining the overall operations and management of the subsidiaries as a whole.

So, we do describe in the disclosure statement that -- that the end result when you net out all of those differences is that on a -- when you compare a consolidated basis to a non-consolidated basis, the recoveries are essentially the same.

THE COURT: And what would -- what would be the debtor's objection to providing the chart that would show what that analysis reveals rather than just provide it in a summary form in the paragraph that you have here?

MR. DICKERSON: To do it correct, Your Honor, it's not a one or two page chart. It is a significant amount of analysis. There are nine different debtors. They are inter-company receivables, royalty payments, so-forth. It requires understanding how the -- how the corporate structure, the

capital structure works with respect to the proceeds that are being brought down from Canada and so-forth. It -- with due respect to Generation's counsel, it is not a one or two-page issue. It's a very complicated issue and, again, we're happy to work our way through it with -- with him, but we think it inappropriate with respect to trying to get that into the disclosure statement at -- at any -- at any point let alone this point and believe that we've provided adequate disclosure that lets people to determine whether the independent fiduciaries for both the Committee and for all parties in interest have done the analysis and if you have questions we're happy to walk you through it, but it -- it's inappropriate and it will delay the process if we were -- would have to amend the disclosure statement to include a understandable detailed substantive consolidation analysis.

THE COURT: All right. But this analysis has already been done --

MR. DICKERSON: That's correct, Your Honor.

THE COURT: -- it's just a matter of how would you make it intelligible. What if you did it in a summary form that just said, all right, stand alone, the creditors of Circuit City West Coast would, you know, receive, you know, between X and Y, you know, substantively consolidated, they receive, you know, what you've got in the plan? Is that feasible?

MR. DICKERSON: Well, Your Honor, I -- I think to the extent that that's all your looking for, we can probably just put language that says that. The -- under a nine consolidated -- on a nine consolidated basis, the -- we believe that a distribution to creditors of Circuit City West Coast would be X and on a consolidated basis we believe it will be Y.

THE COURT: But -- and I think that's all that Mr. Epps is asking to be included, is that type of a --

MR. DICKERSON: I'm sorry, Your Honor.

THE COURT: I thought that that would be just the type of summary that he wanted --

MR. DICKERSON: That --

THE COURT: -- not necessarily just for West Coast but we could do it for each of the debtors so that creditors of those particular debtors would know, look, is it in my best interest to vote in favor of this plan? Now, if this analysis has not been done --

MR. DICKERSON: Well, Your Honor, I think the analysis has been done to a level as we describe here that makes it clear that the substantive consolidation and to be exact, if we had to do the analysis to an exact finite end, then it would cost -- it would require more time, but the analysis that we've done so far --

THE COURT: So -- you -- is the analysis that you have right now, if you were to reveal that, it could very well

be misleading because you haven't gone through all of the various steps and you don't want to have something misleading in the disclosure statement --

MR. DICKERSON: Absolutely, Your Honor.

THE COURT: -- when you know what the answer is, but to get to the ultimate answer is going to take a lot more resources and time and those resources and time are better put to other purposes.

MR. DICKERSON: Absolutely, Your Honor.

THE COURT: Okay. I think I understand your position.

MR. POMERANTZ: Your Honor, just to add a couple things and I think your last point is where I was going to go. There's a difference between disclosure and meaningful disclosure. Disclosure for disclosure sake, I don't think helps anyone and just to give Your Honor a little perspective on our participation analysis and what it took us to get comfortable on substantive consolidation.

THE COURT: I would be very interested in that.

MR. POMERANTZ: The debtor spent several weeks, if not months putting together a conceptual framework to address and consider the issue and I think even in those discussions, the debtor expressed concern or issue on whether they should be substantively consolidated.

We waited for weeks for the analysis to be done and

understandably, the debtor did not want to provide us that analysis while it was in mid-stream. Once we received the analysis, our financial advisors spent probably three days solid, and these are financial advisors who have been working on this case for the last 12 months --

THE COURT: Remind me again, who are the --

MR. POMERANTZ: Protiviti.

THE COURT: Okay.

MR. POMERANTZ: Who are fairly sophisticated not only in bankruptcy work generally, but have a fairly decent understanding and thorough understanding of how this company operated and it took them three days to work through and to understand the debtor's analysis. They were then good enough to explain it to me in four hours which is not a statement of my ability, but they -- so, the time an effort it took to really understand the process and even when we concluded the process, we recognized that if you move one number here or one number here or one assumption here or one assumption here, it would take -- it could change the analysis dramatically and a lot of the assumptions, there was some work that the debtor did to come to that assumption, but each assumption you could spend days, if not weeks, if not months, trying to validate.

So, my concern is in putting out information in some extremely abbreviated form is -- what is really the point? We make the statements in the disclosure statement that we believe

it's in the best interest. There's one -- in essence, one counsel whose objected which we have indicated we're happy to sit down and share that analysis to have him get comfortable at the same place.

THE COURT: Well, it's only -- to the one counsel's who is representing many different parties --

MR. POMERANTZ: No, I -- I understand.

(Phone Ringing Interruption)

THE COURT: -- and they are parties that would be uniquely, you know, positioned in this case to have relied on one of these separate entities.

MR. POMERANTZ: No, I -- I understand that, but we are dealing with 15,000 creditors and there are creditors of different estates which are more than the ones he represented but having said that, if it was an issue and concern to a lot of people out there, I'm sure we would have received a much more significant response to the disclosure statement and given our commitment to sit down with Mr. Epps to share with him the analysis, to spend however long he wants to spend to get to the same conclusion we made, subject, of course, to his right to ultimately come in and deal with the issue at confirmation. We feel that's the best way to deal with the objection and not clutter the disclosure statement with disclosure which at the end of the day, I'm not sure would all be that meaningful.

THE COURT: All right. Thank you. Does any other

party wish to be heard in connection with this matter? Mr. Epps, you wish to reply?

MR. EPPS: May I respond before Your Honor?

THE COURT: Yes.

MR. EPPS: Thank you. Your Honor, I have to -- I have to say that the fact that I -- as Mr. Pomerantz seems to imply that I'm the fly on the windshield of this case is a little bit unfortunate. I happen to believe I'm right in this case and the fact that no one else seems to have found the issue doesn't make me less right. But beyond that, I do think the -- his argument proved too much. The more analysis he tells me that they have done, the more it ought to be distillable into something that someone besides the brains of the top of this case can at least look at.

THE COURT: Well, in fairness though to what Mr. Pomerantz is saying and, you know, the 15,000 creditors that are involved in this case, why doesn't it make more sense if your clients are uniquely situation here to be able to deal with this? The -- to sit down with Protiviti or whoever, the debtor and, you know, from the debtor's side and go through and get the analysis and get comfortable with what it is so that then you can in -- educate your particular clientele, rather than delay the process for everybody and also the time and expense that would go into having to do it that way and also the fact that, you know, because its been represented to be as

complex as it is, that we may run the risk that if we are, you know, disseminating misinformation as opposed to good information.

MR. EPPS: Well, at the risk of reversing roles, my question back to the Court would be, isn't that another -- isn't that disclosure materials that's not approved by this Court if they give me extra materials that are only for my clients? But beyond that issue -- that's what they're proposing is to give me Part B of a disclosure statement --

THE COURT: Well, see, I wouldn't --

MR. EPPS: -- for my clients --

THE COURT: -- I wouldn't --

MR. EPPS: -- I think.

THE COURT: -- I wouldn't look at it that way. I would look at it more in the form of, you know, doing informal discovery or even formal discovery with regard to objections that you might want to raise to confirmation and doing it that way because --

MR. EPPS: Well --

THE COURT: -- because, obviously substantive consolidation is a confirmation issue and you have correctly noted that one of the issues is whether or not there would be a, you know, disparate treatment among creditors in these various estates because of the substantive consolidation. They'd be giving up substantive rights and, you know, we're

familiar with the cases that say that, you know, that that's not appropriate. We need to, you know, why can't you do it in that context?

MR. EPPS: Well, I can do it in whatever context the Court directs, but I -- but I think that, once again, as I was saying that Mr. Pomerantz made and in fact proved too much because when he says if you change a penny here or a dollar here, the numbers go all over the place, well, that -- even that is something that ought to be disclosed, it seems to me in order to decide the issue. Now, if the Court prefers that we have our own private seance with them and I distribute the materials to our client, I guess that's what we'll need to do, but I do find it unfortunate that all this material exists that it cannot be -- is summarized on a page or two because I'm convinced that it actually could be, but I -- but in any case, Your Honor, if the Court has -- I suppose the Court has no objection to our meeting with them and reaching our own agreement on what materials I can show to my clients, I find that unusual, but I feel protected by the Court in its suggestion in that respect that I'm not getting something that I shouldn't get.

THE COURT: Well, you certainly wouldn't be getting something that you shouldn't get, that I think that you should be entitled to get that kind of information.

MR. EPPS: I meant in the sense that it hadn't been

approved as a -- as part of the disclosure process, but that --

THE COURT: I understand.

MR. EPPS: All right. Thank you, Your Honor.

THE COURT: All right. Any other party wish to be heard in connection with this matter?

ALL COUNSEL: (No verbal response)

THE COURT: Mr. Dickerson?

MR. DICKERSON: Thank you, Your Honor. Your Honor, with that, I think that that concludes the discussion of the various objections and I think the only remaining objection is Mr. Epps' client's objection and so I would -- we would -- the co-proponents would request that that objection be overruled.

THE COURT: All right. Well, the Court is going to overrule the objection but with this caveat and that is that you do engage in informal discovery with Mr. Epps so that he can get the information that he thinks is necessary for purposes of any objection that he might want to file to confirmation based on substantive consolidation and if for some reason the parties can't agree on what information is appropriate or whatever, then I would entertain a motion by Mr. Epps to -- for formal discovery shortening discovery periods and the like so that his clients be protected and I don't think that it's receiving information outside the disclosure statement. I think it goes to plan confirmation issues.

MR. DICKERSON: Your Honor, we -- we agree to that,

obviously, and we agree with you and I would further say to any -- any party, prior to filing a confirmation objection of any sort whether it be substantive consolidation or any other issue, please contact either the Committee or the debtors because we would like to try to find a way to resolve that. We're trying to make this a cooperative process and we hope to limit the number of actual objections that you'll need to consider on November 23rd.

THE COURT: Oh, the Court will be very encouraged by that and, you know, I -- I've got to say that given the limited number of objections we had to the disclosure statement, I think speaks strongly to that, that it has -- it appears to the Court to have been a cooperative effort and that, you know, parties are getting information that they want and issues are being resolved in that kind of a manner and, like I said, that is encouraging and so hopefully that -- that will continue and we'll be able to get to confirmation.

MR. DICKERSON: Oh, one -- one item I forgot to mention in all the discussions, Your Honor, is you may have been -- you may have seen in the amended disclosure statement that we described that we have reached a settlement with the PBGC. We will be filing a motion for -- under Bankruptcy Rule 9019 with respect to that settlement. That will resolve all the claim issues and that the PBGC has within the case and so we're happy to include that as part of this process and you can

anticipate that that will likely -- hopefully be heard even prior to confirmation so that we can get those issues resolved.

THE COURT: All right. Well, that's encouraging, as well. All right. Is -- are there any other matters that we need to -- now, we've resolved the disclosure statement with the proposed changes that you've set forth in your chart. The Court is going to approve the disclosure statement, you know, as -- as amended.

MR. DICKERSON: Thank you, Your Honor, and I -- I guess just as a catch-all, I would request that the relief requested in the solicitation procedures motion which includes finding that the -- the disclosure statement is adequate and be approved on the terms that we described here in court and in the pleadings.

THE COURT: And that's item number 12 on the docket and the Court will approve or grant that motion, as well. Is there any other business then that we need to take up today?

MR. DICKERSON: No, Your Honor.

THE COURT: All right. Well, good luck with the solicitation and we look forward to seeing you at the confirmation hearing.

MR. DICKERSON: Thank you, Your Honor.

THE CLERK: All rise. Court is now adjourned.

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C E R T I F I C A T I O N

I, JOY K. BRENNAN, the assigned transcriber, do hereby certify the foregoing transcript of proceedings is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded, to the best of my ability.

/s/ Joy K. Brennan

JOY K. BRENNAN

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